

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**





ORIGINAL

76-6049-50-59

IN THE  
United States Court of Appeals  
FOR THE SECOND CIRCUIT

CITY OF HARTFORD, on behalf of itself and its inhabitants, Richard Brown, Nicholas R. Carbone, John Cunnane, William A. DiBella, Allyn A. Martin, Richard Suisman, Margaret V. Tedone and Olga W. Thompson in their official capacity, Miriam Jordan and Fannie Mauldin,

*Plaintiffs-Appellees,*

*vs.*

The TOWNS OF GLASTONBURY, WEST HARTFORD and EAST HARTFORD,

*Defendants-Appellants,*

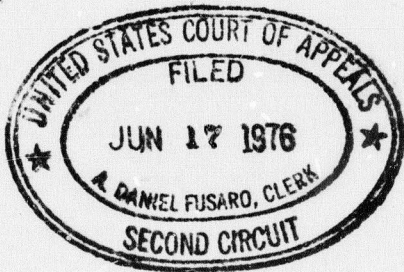
*and*

CARLA A. HILLS, in her capacity as Secretary of the Department of Housing and Urban Development; HAROLD G. THOMPSON, in his capacity as Acting Regional Administrator of the Department of Housing & Urban Development; LAWRENCE THOMPSON, in his capacity as District Director of the Department of Housing and Urban Development; and THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT and the Towns of FARMINGTON, WINDSOR LOCKS, VERNON, and ENFIELD,

*Defendants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

**JOINT BRIEF OF DEFENDANTS-APPELLANTS TOWNS OF  
GLASTONBURY AND WEST HARTFORD**



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## BRIEF OF DEFENDANTS-APPELLANTS TOWNS OF GLASTONBURY AND WEST HARTFORD

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### Statement of the Issues

1. Did the plaintiffs City of Hartford, Mauldin and Jordan, have standing to bring this suit?
2. Did the Secretary of HUD violate the Housing and Community Development Act of 1974?
3. Did the court properly grant injunctive relief against the seven defendant towns upon the complaint of, *inter alia*, the plaintiff City of Hartford?

### Opinion Below

The opinion of the District Court (Blumenfeld, J.) is published in 408 F. Supp. 889; its opinions on the preliminary injunction and on the motion to alter or amend it are published in 408 F. Supp. 879.

### Statement of the Case

#### A. The Case

This suit was commenced in the United States District Court for the District of Connecticut by three sets of plaintiffs: (1) the City of Hartford, purporting to sue "both in its governmental capacity and its representative capacity as the legal representative of its inhabitants" (Complaint, para. 3); (2) 8 of the 9 members of Hartford's legislative body, the Court of Common Council, purporting to sue "in their official capacity as City officials" (Complaint, para. 4); and (3) two allegedly black low-income Hartford residents (Complaint, paras. 5 and 6). The original defendants were the federal Department of Housing and Urban Development (hereinafter "HUD"), and its Secretary, acting Regional Administrator, and



Hartford Area Director. Prior to a hearing on plaintiffs' motion for a preliminary injunction, the Connecticut towns of Enfield, Farmington, Windsor Locks, Vernon, and the three appellants—East Hartford, West Hartford and Glastonbury—were made parties defendant upon motion of the federal defendants.

The complaint alleges four causes of action, denominated as such. All concern the federal Housing and Community Development Act of 1974, Public Law 93-383, 42 U.S.C. § 5301, *et seq.* The seven defendant towns applied to HUD for community development grants under that statute in the spring of 1975. The complaint alleges that HUD, in approving those seven applications, (1) violated the provisions of the Act itself; (2) failed in certain claimed duties under 42 U.S.C. § 3608(d)(5), part of the Fair Housing Act of 1968, and also Executive Order 11603; (3) violated 42 U.S.C. § 2000(d), part of the Civil Rights Act of 1964; and (4) violated 42 U.S.C. § 1981, § 1982, § 1985, and the Fifth Amendment to the United States Constitution. It prayed for a declaratory judgment that the federal defendants had violated plaintiffs' rights, privileges and immunities under the aforesaid statutes and Amendment (but not the Executive Order); and for a preliminary and permanent injunction enjoining the federal defendants from disbursing or transferring any funds pursuant to the seven town applications "until such time as said communities submit to the [federal] defendants appropriate documents indicating compliance with the provisions of 42 U.S.C. § 5301, 42 U.S.C. § 3608(d)(5), 42 U.S.C. § 2000(d)."

The complaint was filed on August 11, 1975. Pursuant to an order to show cause a hearing was convened on August 26 on plaintiffs' motion for preliminary injunction. At that time the federal defendants' motion to add the seven towns as defendants was granted, various scheduling orders were issued, and the matter was deferred until September 22. Perhaps at this same session, too, the Court, after granting the federal defendants' motion to cite in the seven towns as additional defendants, and ordering that they be served with process, stated or im-



plied that the impending hearing on the preliminary injunction might be the hearing as well on the merits, and that the seven towns, though not yet served or appearing, would be deemed to have filed a general denial to the complaint, though neither the transcript nor the record discloses any oral or written decision or order. F.R.C.P. 65(a)(2).

Hearings were held on September 22-24. The transcript of September 24 discloses some confusion and disagreement on the part of counsel as to precisely what the subject of that three days of hearings had been (T 552-554). Clearly, it was a hearing on plaintiffs' motion for a preliminary injunction and on defendants' motion to dismiss or for summary judgment. Apparently, it was also considered to be a hearing on the merits, though no responsive pleadings had been filed (or have ever been filed). Testimony was taken from three witnesses for plaintiff and one witness for defendants. Various affidavits were introduced on both sides, though again the purposes for which they were introduced appears to have been the subject of confusion and disagreement—e.g., whether merely in support of or in opposition to summary judgment motions or as testimony on the merits instead of live testimony (T 552-556). The administrative record before HUD on the seven applications was also before the Court; but again, it was unclear whether the Court was proceeding on the basis of an administrative appeal on the administrative record under the Administrative Procedure Act, or whether the proceedings were going forward as a declaratory judgment and injunction action. In addition, affidavits and letters by way of cover letters and arguments were sent by the plaintiffs and federal defendants directly to the Judge; and though at least two of the affidavits—those of Messrs. Davidoff and Colman dated respectively October 21 and October 20, 1975—never appeared as docketed in the file of this case, they were referred to by the Court in its decision and have appeared in the record on appeal in this case as Item No. 59.

On September 30, the Court issued its decision granting a preliminary injunction without bond. On October 17,



the Court heard motions to reconsider and to alter or amend the injunction; and on October 29 the Court denied the former and partially granted the latter. Thereafter, further affidavits were filed by the federal defendants, as was also a supplemental motion to dismiss or in the alternative for summary judgment on the part of the federal defendants.

On January 28, 1976, the Court filed its decision enjoining the defendant towns from drawing on the Treasury, or spending in any fashion, the funds granted them under the 1974 Act, and noting that the towns might seek to obtain from HUD new approvals of the applications, and that the injunction might be lifted upon filing with the Court of such new approvals. The judgment itself was filed on February 10, 1976.

## **B. Statement of the Facts**

### **1. The Act**

On August 22, 1974, Congress enacted what came to be known as the Housing and Community Development Act of 1974 (hereinafter, "the Act"). This suit deals with a dispute arising out of applications for funds made pursuant to Title I of that Act, 42 U.S.C. § 5301-5317, entitled "Community Development." The clearest picture of what Congress intended Title I to accomplish and the defects in the existing system it was designed to correct can be discerned from the House Banking and Currency Committee Report on the bill, which has been set forth in the Addendum hereto.

One aspect of this program was to be the Housing Assistance Plan, drawn up by the applicant town as a part of its application. 42 U.S.C. § 5304(a)(4). The particular portion of that provision upon which the court below based its decision was the "expected to reside" computation contemplated in 42 U.S.C. § 5304(a)(4)(A):

(A) accurately surveys the condition of the housing stock in the community and assesses the housing assistance needs of lower-income persons (including eld-



erly and handicapped persons, large families, and persons displaced or to be displaced) residing in or expected to reside in the community.

For a clearer picture of the context in which this provision appears, it is instructive once again to turn to the Addendum to the House Committee's report on the bill, and its description both of the application and of the HUD review requirements. (The requirement of HUD action within 60 days of the application's submission was in the final version increased to 75 days.)

One significant aspect of this new title on community development was that while under 42 U.S.C. § 5305 the Title I funds could be used for a wide range of community development activities, the construction of low and moderate income housing was deliberately *not* an eligible activity; thus, the funds involved in the case at bar—whether allocated to the seven suburbs or to the City of Hartford—could not be used by the recipients to alleviate any shortage of low or moderate income housing.

Another significant feature of the Act—consistent with its primary purpose of returning to the individual communities responsibility for ascertaining their own local needs and devising programs to meet them on a local level—is the requirement that both recipients and HUD carry out evaluation activities at the *close* of each fiscal year on the previous year's achievements and uses of allocated funds. 42 U.S.C. § 5304(g).

With this review of the pertinent statutory framework as background, we turn to the particular facts arising out of its implementation in the Hartford area.

## **2. The Hartford Facts**

In the spring of 1975, the seven defendant towns and the plaintiff City of Hartford drafted applications for community development funds under Title I. HUD regulations set April 15, 1975, as the final day for submission of these applications in order that all funds could be committed by the end of the fiscal year (see 24 C.F.R. 570.300(a)). Prior



to that time, pursuant to the requirements of the Act, all these communities filed their applications for A-95 review with the Capitol Region Council of Governments (CRCOG). The City of Hartford and others offered oral and written comments upon the applications of the seven defendant towns during that review proceeding. After completion of this review, the applications were submitted on HUD forms to HUD, and consisted of the Community Development Plan Summary, the Community Development Program, the Housing Assistance Plan (HAP), the Community Development Budget and the certifications of compliance with various legal and program requirements, all pursuant to 24 C.F.R. 570.303. The applications were accompanied by the comments of CRCOG which were, in turn, accompanied by comments submitted to it by the City of Hartford and other interested parties, and the responses of the various defendant towns to those comments.

Upon receipt of the application, the Community Planning and Development (CPD) Division of the Area Office of HUD conducted an initial screening of the submission to determine that all elements had been received and properly prepared. The defendant communities were then notified of the acceptance of the applications and of any deficiencies discovered during the initial screening. Upon receipt of all additional information, the CPD staff conducted a thorough review of the Community Development Plan and Program and the HAP and distributed copies of relevant portions to other divisions of the Area Office for their comments and recommendations. At the conclusion of the review process an administrative review memorandum for each application was submitted to the Area Director, Lawrence Thompson, in which the major elements of the application were summarized and commented upon, the comments of other Area Office divisions were reconciled, and a course of action was recommended. This document also indicated that all legal and programmatic requirements had been satisfied. In light of the controversy involving the applications of the seven defendant



towns, later leading to the case at bar, a memorandum to the file was prepared at the Area Office in which the comments of the CROG and the City of Hartford, the responses by the defendant towns, and the findings of the Area Office were summarized.

During the processing of these applications it became apparent that communities were experiencing difficulty in developing data concerning the number of "lower income" families "expected to reside" within their boundaries. When this became apparent, the processing of all applications not previously approved was suspended during May of 1975, pending further instructions from Washington. These instructions came in a memorandum dated May 21, 1975, from David O. Meeker, Jr., Assistant Secretary for Community Planning and Development (hereinafter, "the Meeker Memorandum"), a copy of which is set forth in the Appendix at page A139.

The first numbered paragraph of the Meeker memorandum required that the individual at the HUD Area Office reviewing the "expected to reside" information in Table II C of the HAP, pursuant to 42 U.S.C. § 5304(a)(4)(A), consult "Journey to Work" data from the 1970 census. "Journey to Work" is one of the several subject reports contained in the U. S. Decennial Census, and was considered data relevant to the question of "expected to reside". The volume provides data on residence as contrasted with principal place of work. The Meeker memorandum required that, consulting this data, the reviewer calculate "a figure for each applicant not previously approved, which will reflect an estimate of potential needs for those employed in and expected to reside within that community or community boundaries." The Meeker memorandum further required in numbered paragraph 2 that the HUD figure thus calculated be compared with the applicant's figure appearing in Table II C of HAP. Finally, numbered paragraph 3 of the Meeker memorandum provided that in cases where the reviewer felt that the needs table (Table II C) of HAP did not include a significant portion of the potential need, the applicant



town should be told that before a grant contract would be tendered, the applicant had to (1) adopt the HUD figure as a first-year figure; or (2) adopt its own figure with appropriate citation of data and methodology; or (3) indicate what steps the applicant intended to take to identify a more appropriate needs figure with its second-year application.

Upon reviewing the "Journey to Work" tables for the Hartford Standard Metropolitan Statistical Area, the Hartford Area Office reviewer, William J. Flood, discovered that, with one exception, the data was broken down only on a portion of county-within-an-SMSA basis, rather than on a municipality-by-municipality basis. Methodology set out in the Meeker memorandum, however, was designed to isolate "expected to reside" data on a municipality-by-municipality basis. Because of the way "Journey to Work" volume data was presented for the Hartford SMSA (that is, county portions only), isolation of individual suburban municipalities was not possible. Mr. Flood therefore felt it was not possible to calculate the figure for each applicant referred to in the first numbered paragraph of the Meeker memorandum so as to obtain a "HUD figure", which would then have to be compared with the figure included in Table II C of the corresponding HAP as required by the second numbered paragraph of the Meeker memorandum. The only exception was the City of Hartford, for which the census data included figures on a number of non-residents working in the City. No information was given, however, on the number of residents living in Hartford and working in *other* SMSA municipalities.

During Mr. Flood's review of the applications, he also examined the documents submitted to the Hartford Area Office by CROG. Those documents contained certain material on "Journey to Work" and "expected to reside" in the seven defendant towns. His review of those documents, however, persuaded him that the figures were made up exclusively of vague and unsupported assertions as to the number of persons expected to reside in each of the



seven communities in question and that, as such, this material did not constitute "significant facts and data, generally available" within the meaning of 24 C.F.R. 570.306(b)(2)(i). This CRCOG material, therefore, was not in his opinion appropriate as a basis upon which to recommend disapproval of the HAPs of the various towns.

(It might be noted parenthetically that in October of 1975, one month after the hearing in the case at bar, plaintiffs submitted to the Court recently-discovered "Journey to Work" figures contained in a tabulation prepared for the Connecticut Department of Transportation, Bureau of Planning and Research, and alleged that this in their opinion constituted "significant facts and data, generally available" which should in April or May of 1975 have been considered by HUD in its review of the applications of the seven towns. A review of these figures, not submitted until a half year after the HUD review, indicates that there is no designation of the income level of those individuals commuting from one municipality to another. Since Table II of the HAP is concerned only with the housing needs for lower-income persons, the newly-discovered tabulation would therefore not constitute significant data, as contemplated by the Act and HUD regulations, upon which the Area Office could recommend that individual "expected to reside" figures in the HAPs of the seven defendant towns be modified or disapproved. In any event, these newly-discovered "Journey to Work" figures were evidently not used by the plaintiffs in their A-95 CRCOG review of the applications of the seven towns nor were they called to the attention of or used by the HUD Area Office in its review and processing of the applications.)

In accordance with the instructions in numbered paragraph 3 of the Meeker memorandum, the Community Planning and Development Division of the Area Office issued a form letter on June 2, 1975, to all Connecticut towns whose applications had not yet been approved prior to receipt of the Meeker memorandum (which included all of the seven defendants except the defendant-appellant East Hartford). A copy of this letter is reproduced in the



Addendum hereto at page 5a. Since it was impossible for HUD to prepare an "expected to reside" figure of its own for reasons stated above, the June 2 letter offered the towns whose applications had not yet been approved only the second and third choices discussed above—that is, adoption by the town of its own figure with appropriate citation of data and methodology or an indication of what steps the town intended to take to identify a more appropriate needs figure with its second-year application. Pending receipt of a town's response to the June 2 letter, processing of that town's application was suspended. Each of the six towns responded, and each chose the third option, thereby obligating itself to take steps to submit a more appropriate needs figure for the second program year. Accordingly, the "expected to reside" figure which each town submitted as part of its HAP was "0". The plaintiff City of Hartford in its application also adopted this course and submitted a figure of "0" as its "expected to reside" computation in its HAP (T. 129). East Hartford, whose application had been approved prior to the receipt of the Meeker memorandum, submitted an "expected to reside" figure of 131.

Because in the opinion of the Hartford Area Office of HUD significant facts and data, generally available and plainly inconsistent with the applications—the statutory and regulatory criteria upon which the Area Office had to act—did not exist at the time of the approval decisions, the Area Office determined, in accordance with the Meeker memorandum, that the "expected to reside" information contained in the applications of the seven towns and of the plaintiff City of Hartford did not present a basis on which to disapprove them. Operating within the 75 day period the statute required of the Hartford Area Office within which to act upon these applications, the applications were accordingly approved.

The statement of facts hereinabove set forth is based in significant part upon the affidavits of Lawrence L. Thompson of September 12, 1975 (Record Item No. 41) and



William J. Flood of September 12, 1975 (Record Item No. 42); and because of the clarity of their presentation of precisely what happened in this case, they are set out in full in the Appendix at pages A102-127.

## ARGUMENT

### I. Plaintiffs Lacked Standing to Sue.

As noted above in the statement of issues, the case at bar presents several questions on appeal. But at the threshold there exists a single, crucial issue—that of the standing of the remaining plaintiffs (the court below having dismissed the 8 city councillors on standing grounds)—which should be dispositive of the case itself. For it is the position of the defendants that neither the City of Hartford itself nor its two alleged residents possessed the requisite standing to maintain this suit; and that they neither alleged nor—in what the court apparently treated as a hearing on the merits—demonstrated facts from which the court below could have found such standing.

Before examining each set of plaintiffs in turn, however, it would be appropriate to set forth the law on standing against which the decision of the court below must be measured.

#### A. The Law

The law on standing to sue has been recently restated in two opinions of the Supreme Court: *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970)—hereinafter, *Data Processing*; and *Warth v. Seldin*, 422 U.S. 490 (1975)—hereinafter, *Warth*. *Data Processing* sets forth two tests, both of which plaintiffs bear the burden of satisfying, by which to measure plaintiffs' right to invoke the assistance of the courts: (1) "the question whether the interest sought to be protected by the complainant is arguably within the zone of the interests to be protected or regulated by the statute or constitutional guarantee in question" *Id.* at 153; and (2)



"whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise" *Id.*, at 152.

*Warth*, decided but a year ago and prior to the decision below in this case, went considerably beyond the skeletal outlines of standing described in *Data Processing* in expanding upon the requirements plaintiffs must satisfy. These can be summarized in three sections of that opinion:

Petitioners must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent. Unless these petitioners can thus demonstrate the requisite case or controversy between themselves personally and respondents, "none may seek relief on behalf of himself or any other member of the class" *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974). See e.g., *Bailey v. Patterson*, 369 U.S. 31, 32-33 (1962).

*Id.*, at 502

But there remains the question whether petitioners' inability to locate suitable housing in Penfield reasonably can be said to have resulted, in any concretely demonstrable way, from respondents' alleged constitutional and statutory infractions. Petitioners must allege facts from which it reasonably could be inferred that, absent the respondents' restrictive zoning practices, there is a substantial probability that they would have been able to purchase or lease in Penfield and that, if the court affords the relief requested, the asserted inability of petitioners will be removed. *Linda R. S. v. Richard D.*, 410 U.S. 614 (1973).

*Id.*, at 504

We hold only that a plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he personally would benefit in a tangible way from the courts' intervention.



Absent the necessary allegations of demonstrable, particularized injury, there can be no confidence of "a real need to exercise the power of judicial review" or that relief can be framed "no broader than required by the precise facts to which the court's ruling would be applied." *Schlesinger v. Reservists to Stop the War*, 418 U.S., at 221-222.

*Id.*, at 508

In deciding the question of plaintiffs' standing after a hearing on the merits (as opposed to a motion to dismiss) neither the trial court nor reviewing courts may lift from plaintiffs their burden of proof on the question by accepting as true all material allegations of the complaint, and construing the complaint in their favor. *Id.*, at 501. The court below and this court, therefore, must measure plaintiffs' standing by the evidence adduced, not by adopting either unwarranted deductions of fact or legally conclusory allegations. Indeed, even on a motion to dismiss, the court would *not* be expected to accept as true or construe in favor of plaintiffs any allegations except *material* allegations of *fact*. *Cruz v. Beto*, 405 U. S. 319, 322 (1972); *Associated Builders, Inc. v. Alabama Power Co.*, 505 F. 2d 97 (CA-5; 1974); *Avins v. Magnum*, 450 F. 2d 932 (CA-2; 1971); see generally 2A Moore, *Federal Practice*, p. 2265-2269, § 12.08 (Second Edition).

Also, it should be borne in mind that the standing of plaintiffs with respect to one defendant may not suffice as standing with respect to other defendants. The Supreme Court has stated that "Congress may create a statutory right or entitlement the alleged deprivation of which can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute." *Linda R. S. v. Richard D.*, 410 U.S. 614, 617, n.3 (1973). The natural corollary of that has at least by implication been recognized by this Court: while those statutes may confer standing upon plaintiffs to whom statutory duties are owed as to defendants owing those statutory duties, that standing does not necessarily cover defendants not chargeable by statute with discharging



such duties. *Evans v. Lynn*, No. 74-1793 (CA-2; 6/2/75) Slip Op. 3899-3900, 3920, *rehearing en banc granted*, August 11, 1975.\* And with respect to those statutory duties to support standing there must be an allegation and showing that the defendant owing the duty "consciously and expressly adopted a general policy [of nonenforcement] which [is] in effect an abdication of its statutory duty." *Adams v. Richardson*, 480 F. 2d 1159, 1162 (C.A.D.C.; 1973—*en banc, per curiam*); cited with approval, *Evans v. Lynn, supra*, at 3892.

All of these principles of standing have recently been affirmed once again in *Simon v. Eastern Kentucky Welfare Rights Organization*, — U.S. —, 44 U.S.L.W. 4724 (June 1, 1976).

Applying these general principles of standing to the facts of this case, the question to be answered in determining standing becomes: have plaintiffs alleged and shown specific, concrete facts demonstrating that what the federal defendants and each of the defendant towns did deprived them personally of a specific statutory right or entitlement affirmatively owed to them personally by each defendant to low and moderate income housing; and that if each of the defendants had refrained from doing what they did, these plaintiffs would have been able to find low and moderate income housing; and that if the court affords these plaintiffs the relief they seek against these defendants, their asserted inability to find low and moderate income housing will be removed?

With these criteria for standing in mind, we turn to examine each set of remaining plaintiffs, looking first at the basis on which the trial court found standing and then examining those bases.

## **B. The City of Hartford**

### **1. The District Court's Rationale**

The City of Hartford, a municipal corporation of the State of Connecticut, purported to bring this suit "both in its governmental capacity and its representative capacity

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\* See note *infra*, p. 53 for discussion of *en banc* decision.



as the legal representative of its inhabitants" (Complaint, para. 3). The District Court did not distinguish between these two capacities in its ruling, but simply found the City to have standing.

The court proceeded along the following route of rationation:

1. It cited the findings in 42 U.S.C. § 5301 that there are serious problems in "the Nation's cities, towns, and smaller urban communities," and that the primary objective of Title I was—"by providing decent housing, and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate incomes"—to develop viable urban communities.

2. It then turned to certain affidavits originally filed by plaintiffs as attachments to their brief in opposition to HUD's motion to dismiss or for summary judgment, and to an exhibit attached to that brief consisting of a purported Brookings Institution study of 58 American cities, and from this found inadequate housing in Hartford, which might be alleviated if Hartford residents could find jobs outside the city and would move.

3. From these findings, it found no doubt that the statute was intended to ameliorate the problems facing Hartford, thus satisfying the "zone of interests" test.

4. It then turned to 42 U.S.C. § 5306(e), providing for reallocation of unused Title I funds "first, in any metropolitan area in the same State . . .", and to HUD regulations implementing that statute giving first priority to "the same metropolitan area" as that from which the reallocated funds had been withdrawn (24 C.F.R. § 570.409 (f)(1)(i)); and found that Hartford had in fact alleged "injury in fact" because if the funds had been improperly allocated to the seven defendant towns, Hartford would "be eligible to receive them, and will have a strong statutory priority." Memorandum of Decision, p. A49.

## **2. Analysis of Hartford's Standing**

The District Court's rationale cannot withstand scrutiny. Taking first Hartford's claim to standing as "the legal representative of its inhabitants," there is no doctrine of



federal or Connecticut law making a municipal corporation the "legal representative" of those whom fate or choice has placed within its borders. No claim was made and no evidence was adduced that the City of Hartford had by any competent authority been appointed legal representative, for whatever purpose, of its over 150,000 inhabitants. It is an arrogation of power and position that simply will not wash.

If by this claim Hartford means to invoke the concept of *parens patriae*, then the City presumes to a status which has consistently been denied to its parent and creator, the State. A municipal corporation is a mere creature of the state, and as such "can exercise no powers except those which are expressly granted to it or are necessary to enable it to discharge the duties and carry into effect the objects and purposes of its creation." *Bredice v. Norwalk*, 152 Conn. 287, 292, 206 A. 2d 433 (1964), and cases therein cited. Hartford has alleged or shown no express grant of power from the state to sue the federal government as *parens patriae* for its inhabitants, nor has it alleged or shown such power to be necessary to it.

Indeed, the law is clear that the creator itself of Hartford, the State, has no such standing; it is the federal government, not the state, which represents the interests of citizens as the ultimate *parens patriae*. *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966); *Florida v. Mellon*, 273 U.S. 12, 18 (1927). Thus, the standing of Hartford, if it exists at all, must derive from its capacity as a unit of local government; and in this, too, it fails.

To place the municipal corporation of Hartford in the "zone of interests" of the Act—that is, that the "interest sought to be protected by [Hartford] is arguably within the zone of interests to be protected or regulated by [the Act]" *Data Processing*, at 153—the District Court essentially found that the Act recognized the existence of problems in "cities, towns and smaller urban communities," that Hartford was a "city", and that Hartford had problems. The term "city" as used in the Act is defined in 42 U.S.C. § 5302(a)(5) as including "any unit of



general local government which is classified as a municipality by the United States Bureau of the Census." In Connecticut, each of the 169 towns is a municipal corporation of the state. There is in the use of the word "city" in the Act no connotation of "core city" or "central city" so heavily relied upon by the Court below in building its case for "zone of interests" satisfaction. n. 14. The focus of the Act, as stated in 42 U.S.C. § 5301(c), is low and moderate income *people*, and the provision of decent housing and suitable living environment and expanded economic opportunities for *them*, as people. The Act itself was not concerned with municipal corporations as governmental bodies, but merely as units defining the area of operation of grants and determining the programs and uses for federal funds.

Likewise, the figures in the affidavits the court below cites as authority are untested, unexamined allegations by interested parties. The court appears to find significance in its claim that "the figures contained therein have not been challenged by the defendants." Memorandum of Decision, page A47. Defendants' response must inevitably be that there was no *occasion* to challenge those figures. They were contained either in affidavits or unsworn-to materials appended to plaintiffs' brief opposing defendants' motion to dismiss or for summary judgment. As such they presumably supported plaintiffs' contention that there existed genuine disputes as to material facts barring summary judgment or dismissal. Many of the alleged "facts" need not have been challenged by defendants, for they clearly were not "material facts" germane to the issues under the Act posed by plaintiffs' complaint. To the extent there were "material facts" contained in these affidavits and exhibits, defendants' failure to "challenge" can only be construed as a concession that there was a genuine dispute as to them, which it would not be the office of a motion to dismiss or for summary judgment to resolve. The affidavits and the Brookings Institution study cannot suddenly be transformed into uncontroverted evidence showing elements of standing. They were never introduced for that purpose and never understood to be more than supportive



of plaintiffs' opposition to dismissal or summary judgment. (This confusion is but one example of the general confusion caused by the decision of the court—unordered in advance—to treat the hearing on preliminary injunction and motion to dismiss as a final hearing on the merits).

The City of Hartford, thus, has neither alleged nor proven that, "in its governmental capacity" *it* was seeking to protect an interest *of its own* within the zone of interests protected or regulated by the statute. Indeed, in its own complaint it in no way intimates a desire or intent that any funds previously granted to the seven defendant towns be reallocated to *it*. Its prayer for relief contemplated only enjoining HUD from disbursing these funds *until* the communities submitted to HUD "appropriate documents indicating compliance with" various federal statutes. (In point of fact, since Hartford itself had filed its application in as allegedly deficient a manner as the seven towns, it presumably would be subject upon counterclaim to a similar injunction, estopping it from any such reallocation). Any "interests" Hartford may be advancing in this case are obviously the "interests", then, of low and moderate income people who might be expected to reside in the seven towns as a result of their working there. But since it cannot raise these interests as *parens patriae* for such persons now living in Hartford, it as a city "in its governmental capacity", admitting at the outset it is seeking no additional funds for its own use within its own borders, is seeking to protect or advance no interest *of its own*, and is seeking to ensure the performance of no affirmative statutory duty owed *to it* in its governmental capacity by the federal defendants—to say nothing of the seven towns; and thus cannot be said to fall within the "zone of interests" created by the Act.

The finding of "injury in fact" to the City of Hartford likewise must fall. Based as it is upon Hartford's claim to reallocated funds, it is negated by Hartford's very failure in its complaint to allege any interest in or intent to seek such funds. Even without such an implied disclaimer, however, the test could not be met.



The court below attached "standing" significance to the reallocation provisions of 42 U.S.C. § 5306(e) and 24 C.F.R. 570.409(f)(1)(i), providing for reallocation with first priority to, respectively, "any metropolitan area" and "the same metropolitan area" in the same state. In these two provisions the court finds Hartford to have "a strong statutory priority." Such a conclusion can only derive from a misreading of "metropolitan area" to mean "core city" or "central city". The terms of the Act negate such a reading.

As used in the Act, "metropolitan area" means "a standard metropolitan statistical area as established by the Office of Management and Budget" (hereinafter, "SMSA"), 42 U.S.C. § 5302(a)(3). Thus, when 42 U.S.C. § 5306(e) speaks of "any metropolitan area in the same State . . ." it means any SMSA in Connecticut; and when the HUD regulation speaks of "the same metropolitan area", it means the same SMSA.

The Office of Management and Budget has published a booklet entitled *Standard Metropolitan Statistical Areas*, the latest revision being through December, 1975. That volume discloses the existence of 12 SMSA's in Connecticut, comprehending 110 of the State's 169 municipalities. Under the terms of 42 U.S.C. § 5302(a)(3), therefore, these 110 towns, and not the City of Hartford alone, would have first priority to any reallocated funds, presumably on an equal basis. (The SMSA's and their component towns are set forth in the Addendum hereto). That same volume discloses that the seven defendant towns are, along with Hartford, part of the "Hartford SMSA", which includes 37 towns. Thus, under 24 C.F.R. 570.409 (f)(1)(i), if the funds of any town were unused, each of the other 36 would have equal priority to their reallocation. Indeed, nowhere in the Act is there a provision giving the City of Hartford—only one of the 110 towns in Connecticut's 12 SMSA's—any priority over any other town.

The dilution of Hartford's claimed priority position does not stop here, however. For the "reallocation" to which the court below attaches such "standing" signifi-



cance is itself rigidly circumscribed by the very regulations invoked by the court. That section of the September 12, 1975 Federal Register, 40 Federal Register 42347-42348, cited by the court for the HUD regulation on reallocation is set forth in the Addendum hereto. § 570.409 (d) discloses that reallocations of funds would be used "to make grants to eligible applicants with urgent needs", as defined in § 570.401(b)(1) and (3). §§ 401(b)(1) and (3), in turn, also set out on the same page provide as follows:

(1) completion of urban renewal projects and neighborhood development programs

(3) completion of projects assisted under the water and sewer facilities grant program, the neighborhood facilities grant program, and the open-space land program.

And § 570.409(e)(2) limited those applicants eligible for consideration to those applying for urgent needs funds as of August 15, 1975.

When the court found standing under the reallocation provision of the Act and regulations, it had before it no allegation or proof that the City of Hartford had any such urgent needs as were defined by the regulation the court itself invoked, or that the City of Hartford had ever applied for any reallocation as it was required to do by the regulations cited. Instead, the Court had before it the uncontroverted affidavit of Lawrence Thompson, Area Director of HUD, that Hartford had not so applied (though New Haven, West Haven, Danbury and Middletown had), and that Hartford would not even be eligible for *consideration* (Thompson Affidavit of October 10, 1975); and no claim by the City of Hartford of any intent to seek funds allocated in the first instance to the seven towns. And thus, there was *no basis whatsoever* for the court's finding of injury-in-fact to Hartford in its governmental capacity. There was no way that Hartford, in the court below's words, "stands to benefit in a tangible way



from this court's intervention". Memorandum of Opinion, p. A49.

The necessity that there be an affirmative duty owed by defendants to plaintiffs to support standing leads even more forcefully to the conclusion that even in the unlikely event a theory of Hartford's standing vis-a-vis the *federal* defendants could be constructed under the Act, no such theory of standing vis-a-vis the seven towns, jointly or severally, could be devised. For to the extent that the Act imposes duties upon anyone, they are imposed upon the federal government. The Act imposes no duties upon towns *inter se*, as units of local government. Thus there can under the rubric of the cases be no standing for the City of Hartford as to the seven defendant towns in this case. Yet, ironically, it was against them and *only them* that injunctive relief was ordered.

### C. The Two Individual Plaintiffs

#### 1. The District Court's Rationale

The two individual plaintiffs, Miriam Jordan and Fannie Mauldin, claimed to be black low-income Hartford residents receiving state welfare assistance. Jordan claimed to be seeking "decent low-cost housing" because her landlord sought repossession of her dwelling unit. She alleged having sought "low-income housing" at unspecified times in only two defendant communities, and claimed lack of success "due to the lack of available low-income housing". Mauldin once lived in a suburban community, but lost her home and moved to Hartford, allegedly after failing in her efforts "to locate housing she could afford in the suburbs" (not identified as being "low-income housing" and not any of the seven defendant towns). (Complaint, paras. 5 and 6 and affidavits). Neither plaintiff testified at the hearings in this case. They did submit affidavits, and affidavits in support of *forma pauperis* petitions.

Upon these allegations, the court found plaintiffs to satisfy the "zone of interests" test under the Act because



they were "poor persons living in Hartford in sub-standard housing". Memorandum of Decision p. A51. The Court also found that as members of minority groups they were "entitled to the protection of the federal civil rights acts", p. A52; presumably meaning by that that this was another buttress to "zone of interests" standing, but not under the Act.

The Court, citing Judge Oakes's opinion in *Evans v. Lynn, supra*, also appeared to find plaintiffs within the "zone of interests" created by Title VIII, 42 U.S.C. § 3608, which "seeks to ensure fair housing throughout the United States" Slip. Op. 3897. The court also appeared to find plaintiffs' standing as to HUD by analogy to Judge Gurflein's concurring and dissenting opinion in *Evans v. Lynn* under the Administrative Procedure Act as "persons aggrieved by agency action", but it is unclear whether this APA standing is found as to *both* prongs of the standing test, or only the "zone of interests" prong. The court below made no finding of standing under Title VI of the 1968 Civil Rights Act, 42 U.S.C. § 2000d, so it is unclear if any decision on standing was posited on that ground.

Finally, in what it recognized as a difficult process, the court below found the injury in fact test satisfied. In doing so it found as an objective of the statute "the spatial deconcentration of lower-income groups, particularly *from* the central cities" Memorandum of Decision, p. A54 (emphasis supplied); presumably by this curious wording the court intended to imply a statutory objective of dispersing *among* different towns lower-income people now living in Hartford (a conclusion discussed at greater length *infra*). The court then found these two plaintiffs to be among the "persons for whom Congress indicated it might be beneficial to relocate outside the central city" *ibid.*, citing for this proposition 42 U.S.C. § 5301(e)(6). It then found both the "zone of interests" and "injury-in-fact" tests to have been satisfied because:

If [HUD] approval was improper, the plaintiffs may well have lost the benefits of re-directed priorities by the applicant towns, or, perhaps, the benefits of



projects implemented by the City of Hartford with any reallocated funds.

*Id.*, at A55-56. And again citing Judge Oakes's opinion in *Evans v. Lynn*, it finds a claim of injury from purposeful administrative inaction which "may perpetuate existing patterns of racial (and economic) segregation", a claim under the 1968 Civil Rights Act that the court claims distinguishes this case from *Warth*.

## **2. Analysis of Plaintiffs' Standing**

Because of the great reliance the court below placed upon two of the three opinions in *Evans v. Lynn*, it would be well to note at the outset one significant aspect of that case different from the case at bar which significantly affects the manner of review. *Evans* came to this court upon a dismissal of the case on standing grounds. No hearing on the merits had been held. In such a case, "both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501 (1975). No such limitations need, or may, restrict the court's review of the case at bar; for here, the court below heard the case on the merits. Thus, the plaintiffs had an opportunity to meet their burden of proof on all issues, significantly including standing, and must be tested in this respect as in all others on the basis of the proof adduced on the allegations made.

As part of its formulation of facts placing plaintiffs in the "zone of interests" created by the Act, the court below found they lived in "sub-standard housing." Plaintiffs did not so allege, and there is not a scintilla of evidence in the record to substantiate that finding or, indeed, *any* finding about the quality of plaintiffs' present housing. Neither has either of the plaintiffs alleged or offered evidence to prove that she has a present desire or would have a future desire to move to any of the seven defendant towns, or that she has a present job or will or even may have a future job in any of the seven defendant towns, or that she would be among those who, "on the basis of significant facts and



data, generally available and pertaining to community and housing needs and objectives" (42 U.S.C. § 5304(c)(1)), would have been or would now be "expected to reside" in any of the seven defendant towns under 42 U.S.C. § 5304 (a)(4)(A), so as to be includible in the computation of a HAP and be taken into consideration in determining the community development needs of that town. There is no allegation, intimation or evidence that if each of the seven defendant towns doubled, trebled, or quadrupled overnight their supply of low or moderate income housing, either of these plaintiffs would be interested in moving there. To the extent either of them claims once to have sought such housing outside of Hartford, it was in only two defendant towns at some unspecified time in the past. *No presumption exists that anyone living in Hartford would rather live elsewhere.*

Since the gravamen of plaintiffs' complaint is the inadequacy of the applications of the seven defendant towns, and since plaintiffs seek no relief by way of reallocation of town grants to Hartford, it is difficult to see how plaintiffs can be found to be advancing an interest of *their own* within the "zone of interests" protected and regulated by the Act. The Act posits local determination of the local needs of those living in and expected to reside in the town.

As for the court's finding that plaintiffs as "members of minority groups" are entitled "to the protection of the federal civil rights acts," the footnote reference, n. 19 on page A52 of the opinion, indicates a reliance on *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972). That case dealt with a suit under Title VIII of the 1968 Civil Rights Act, 42 U.S.C. § 3601, et seq.; specifically, it was a complaint under the provisions of 42 U.S.C. § 3610(d). That, in turn, was the culmination of statutorily-prescribed complaint procedures begun by plaintiffs under § 3610(a). Furthermore, *Trafficante* involved allegations of racial discrimination against non-whites by the landlord, Metropolitan.

The case at bar involves no housing discrimination. The applications under the Act which are the undisputed



focus of this suit are for Title I funds no part of which could be used for the construction of housing. No claim is made that any of the seven defendant towns racially discriminated in their housing practices against any of these plaintiffs. No allegation has been made that in omitting to do with their applications what plaintiffs claim should have been done, any of the defendants were racially discriminatory or were engaging in a "discriminatory housing practice" injurious to these plaintiffs. 42 U.S.C. § 3610(a). *Had* there been such an allegation, the statutorily-prescribed remedy upheld in *Traffoante* was that set forth in § 3610, and was not pursued by these plaintiffs in this case. Furthermore, "discriminatory housing practice" as defined in 42 U.S.C. § 3602(f) means "an act that is unlawful under section 3604, 3605 or 3606 of this title". The only section of Title VIII plaintiffs invoke is § 3608(d)(5).

Any attempted reliance by plaintiffs upon *Evans v. Lynn* would be equally misplaced. *That* case alleged that plaintiffs were minority residents residing in "racially concentrated areas of the county" because federal inaction permitted maintenance of "a growing pattern of racial residential segregation" in other areas of the county. Slip Op. 3888. Suit was originally brought against two federal agencies and the regional planning agency. In *Evans*, the relevant unit of local government (in a suit, incidentally antedating and not involving the 1974 Act) was Westchester County, with plaintiffs alleging racial residential segregation within the county in alleged violation of Titles VI and VIII of the 1968 Civil Rights Act.

In the case at bar, there is no claim of racial segregation. Under the Act whose provisions plaintiffs claim were violated, the relevant unit is obviously the "unit of general local government which is classified as a municipality" 42 U.S.C. §§ 5302(a)(5) and 5303(a)(1), which devises applications for and receives grants of Title I funds. Plaintiffs do not allege that they live in "racially concentrated areas" of Hartford or of any of the seven defendant towns; nor do they allege they must do so because of "a growing pattern of racial residential discrimination" within Hartford or within any town in which



they reside. *Their* complaint is simply that the seven defendant towns failed to follow statutory procedures in filling out their grant applications, and they want to hold up such funds until the applications have been corrected. *Evans v. Lynn* does not support Title VI or Title VIII standing on these facts.

So far as plaintiffs' alleged standing under the APA is concerned that, far from being supported by analogy to Judge Gurfein's concurring and dissenting opinion in *Evans*, is negated by the Supreme Court's opinion in *Sierra Club v. Morton*, 405 U. S. 727 (1972). That case, dealing with standing under the APA, concerned the standing of Sierra Club to seek judicial review under the APA of a decision by federal officials approving an extensive skiing development in the Mineral King Valley in the Sequoia National Forest in California. In denying the plaintiff standing, the Supreme Court stated as follows:

But the "injury in fact" test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.

The impact of the proposed changes in the environment of Mineral King will not fall indiscriminately upon every citizen. The alleged injury will be felt directly only by those who use Mineral King and Sequoia National Park, and for whom the aesthetic and recreational values of the area will be lessened by the highway and ski resort. The Sierra Club failed to allege that it or its members would be affected in any of their activities or pastimes by the Disney development. Nowhere in the pleadings or affidavits did the Club state that its members use Mineral King for any purpose, much less that they use it in any way that would be significantly affected by the proposed actions of the respondents.

*Id.*, at 734-735

But a mere "interest in a problem," no matter how longstanding the interest and no matter how qualified



the organization is in evaluating the problem, is not sufficient by itself to render the organization "adversely affected" or "aggrieved" within the meaning of the APA. The Sierra Club is a large and long-established organization, with a historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if a "special interest" in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide "special interest" organization, however small or short-lived. And if any group with a bona fide "special interest" could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so.

*Id.*, at 735-736

Here these two Hartford resident plaintiffs are attacking the completeness of community development fund applications by seven defendant towns. They do not allege they live in those towns, work in those towns, visit those towns, will or would like to live in or work in or visit those towns, or have any contact with those towns. The funds for which these towns have applied are by the Act specifically limited to certain uses. The construction of housing is not one of them. The Act, in its terms and its legislative history (*cf.* "Statement of the Facts" *supra*) manifests a clear intent on the part of Congress that each community would determine its own community development needs based upon certain criteria, significantly including its assessment of the needs of lower-income people "residing in or expected to reside in the community." Toward this end, the Act mandates the participation of the town's citizens in the process of developing the application. 42 U.S.C. § 5304(a)(6). For grants to be made, each applicant town must certify that its plan has been developed "so as to give maximum feasible priority to activities which will benefit low or moderate income fami-



lies or aid in the prevention or elimination of slums or blight." 42 U.S.C. § 5304(b)(2).

To permit these two Hartford residents, solely on the basis of an unproven state of impecuniousness, to acquire standing here would in effect be to afford *any* person similarly financially situated, wherever he or she might live in Connecticut or the United States, standing to challenge the applications of any town for Title I funds. No allegation or showing of any contact with the applicant town apparently would have to be made. This, surely, would fly squarely in the face of the clear holding of *Sierra Club*.

Judge Gurfein's concurring and dissenting opinion in *Evans* does not compel a contrary result. That case involved allegations of racial discrimination in housing matters and proceeded under Title VIII of the 1968 Civil Rights Act. There, Westchester County was the relevant unit of government and plaintiffs had alleged that they lived in that county and that funds had been granted to a section of that county that practiced racially discriminatory housing policies. There, too, the matter before this court arose on a motion to dismiss, requiring this court to take all material allegations as true and to construe the complaint most favorably for the plaintiff. Yet despite all of these aids to a pro-plaintiff ruling, Judge Gurfein significantly qualified his opinion:

I would not hold that the plaintiffs necessarily have standing to seek injunctive relief against the Secretary of HUD and his assistants to restrain the grant of federal funds, for that involves the preliminary question of whether a determination by HUD to grant funds to New Castle is subject to judicial review and, if so, at whose instance, a matter we need not decide if we simply reverse the summary judgment.

*Id.*, at Slip Op. 3917

In my view, a person may be an "aggrieved person" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 702, to remedy administrative inaction



without necessarily having standing for other relief. He may be aggrieved by HUD's failure to perform its statutory duty of inquiry, which is for his class benefit. He may not have been injured in fact sufficiently to coerce the executive agency to withhold funds.

*Id.*, at 3919-3920

Testing the standing of these two Hartford plaintiffs, then, by the standards enunciated for that purpose by the courts, we find it sadly lacking. They do not demonstrate that they fall within the "zone of interests" of any statute they have cited. They do not demonstrate any injury done to them personally by any of the defendants. They do not demonstrate that they were in any way disabled from doing anything because the towns' applications were as they were and HUD so approved them, or that absent these two facts they personally could have done anything differently themselves. They do not demonstrate that if the court grants them the injunctive relief they seek, their asserted (or, more accurately, unasserted) inability will be removed. They cannot even demonstrate that Hartford would have gotten the seven towns' funds and used them for their benefit, because they do not pray for such relief, they have no control over whether Hartford applies for those funds or not, Hartford has not applied for those funds, and there is no allegation either that Hartford had the urgent needs to which those funds had to be devoted or that, if it did, those needs impinged at all on these plaintiffs. Accordingly, these plaintiffs lacked standing to bring this suit.

## **II. The Secretary of HUD Did Not Waive the Statutory Requirement of a Housing Assistance Plan.**

The only statutory violation the trial court claims to find in this case, and the ground on which it posits its judgment, is a finding that HUD disregarded the provisions of 42 U.S.C. § 5304(a)(4)(A) by approving applications of the defendant towns "without requiring the com-



munities to complete one element of the 'needs' section of the HAP; that part which requires a community to estimate the housing needs of low income persons 'expected to reside' within its borders.' Memorandum of Decision p. A62. Six of the seven defendant towns, as well as the plaintiff City of Hartford, submitted a "0" figure for "expected to reside" (see Statement of Facts; *supra*); the defendant East Hartford submitted a figure of 131.

Hartford and the six defendant towns proceeded in accordance with the Meeker memorandum of May 21, 1975, discussed *supra* in the "Statement of the Facts." The court found this memorandum, and HUD's acquiescence in the towns' following of it, to be a waiver of the HAP requirement by HUD. It read 42 U.S.C. § 5304(b)(3)—which set forth the sole conditions under which the Secretary could waive all or part of the requirements of § 5304(a)(1), (2) and (3)—and § 5304(b)(4)—which permitted the Secretary to accept the applicants' certifications as to compliance with the requirements of § 5304(a)(5) and (6)—as meaning that Congress intended no waiver to be permissible of the HAP provided for under § 5304(a)(4) under any circumstances. The court thus found the "waiver" of the HAP a violation by HUD of the Act, and proceeded to issue an injunction against the towns (which, along with the Area Office of HUD, the court had previously found to be not "entirely at fault". Memorandum of Decision, p. A66).

It is respectfully submitted that there is no support, in law or the record, for the court's holding. Even if the Act can be construed by recourse to the canon of "*inclusio unius est exclusio alterius*" to bar waiver of the HAP *or any of its component parts*—a subject we shall treat later—there is no basis upon which to hold that what was done here was such a waiver. It was nothing more and nothing less than a *deferral*, a *postponement* for a one-year period until data permitting an intelligent estimation of "expected to reside" figures became available; and instead required the applicant to indicate what steps it intended to take to identify a more appropriate needs figure in its *second-year* application. It was an administrative concession to



the realities of the situation a few months after enactment of an Act calling for the development of an entirely new type of figure—those “lower-income persons . . . expected to reside in the community.” § 5304(a)(4)(A).

#### A. The Court’s “Spatial Deconcentration” Premise

To deal properly with the court’s holding on the HAPs, however, it is important to deal first with what, though not a holding, clearly appears to be the underlying premise of the court’s entire opinion, the foundation for its view both of plaintiffs’ standing and of the significance of various sections of the Act. That underlying premise is that the central purpose and objective of the Act was the “spatial deconcentration” of lower-income persons *between* or *among* communities. The court has fastened upon the solitary mention of this phrase in 42 U.S.C. § 5301(c)(6)—“the spatial deconcentration of housing opportunities for persons of lower income”—and has transformed it into the heart and soul of the Act, and, removing it from the context in which it was enacted, has reinterpreted it as a congressional mandate for a mass redistribution of the poor throughout a county, an SMSA, or a state.

This reading—unwarranted by and contrary to the clear language of the Act and its legislative history—surfaces in a number of places throughout the court’s opinion. It begins innocuously enough near the conclusion of the lengthy footnote 14, in which the court recites—evidently as relevant findings—housing and welfare statistics for Hartford alone and in comparison with other cities, derived from affidavits submitted in opposition to defendants’ dismissal motion and from an unsworn-to Brookings Institution study of 58 cities. The court then notes as follows:

This housing crush could be relieved by a movement to the surrounding towns, perhaps motivated by a search for employment opportunities. This sort of exodus may well have been what Congress anticipated when it established the “expected to reside” category on the Housing Assistance Plan and emphasized the importance of “planned or existing employment



facilities" to the calculations required to estimate this aspect of a town's housing needs for lower-income persons.

*Id.*, at p. A48

Six pages later citing § 5301(c)(6), the court escalates its reading of the Act to a Congressional finding of the benefits of resettlement. In discussing the plaintiffs Mauldin and Jordan, the court states:

The statute clearly has, as one of its objectives, the spatial deconcentration of lower-income groups, particularly from the central cities. Congress apparently decided that this was part of the solution to the crisis facing our urban communities. These two plaintiffs are among this very group of persons, persons for whom Congress indicated it might be beneficial to relocate outside the central city.

*Id.*, at p. A54

Further on, the court finds the significance of the "expected to reside" figure in its status as "the keystone to the *spatial deconcentration objective* of the 1974 Act." Memorandum of Decision, p. A70. On the very next page, the court again adverts to population dispersal, but then concedes that towns are free *not* to participate in the program.

The success of this new "carrot and stick" approach to the dispersal of low and moderate income groups depends upon the willingness of the suburban towns to provide federally-assisted housing within their boundaries. Of course, communities can choose not to participate in the program.

*Id.*, at p. A-71-72

Based upon this view of the centrality of population resettlement of Hartford residents to towns outside Hartford, the court concluded that "the Meeker Memorandum removes the incentive Congress provided for these communities to accept such federally-assisted housing, thereby



effectively gutting the 'enforcement' provisions of the Act." *Id.*, at p. A73. (It is appropriate here to note that even if resettlement were the heart of the Act, to say a one-year delay in supplying estimates "guts" the enforcement provisions of the Act is a complete *non sequitur*).

A review of the Act and of its legislative history clearly belies any Congressional intent in 1974 to engage in social engineering experiments of resettlement more reminiscent of the heyday of federal bureaucratic planning of the 1930's and mid-1960's. Indeed, it was the very failure of those plans and Congressional and popular reaction to that failure that led to the novel aspect of Title I that saw a return to each local unit of government of maximum feasible self-determination of local needs, within very broad statutory guidelines and with only minimal front-end review or interference by HUD. The Act is the very antithesis of a federal policy of population resettlement reflecting a father-knows-best paternalism by the federal government towards low income persons just because they are low income persons.

Title I, it should be recalled, represented the "community development" section of the 1974 Act. Title I funds could not be used to construct housing; those funds could only be used for the non-housing purposes set forth in 42 U.S.C. § 5305(a). Housing and low income housing needs, to the extent they were involved, became relevant only as background data against which to measure the appropriateness of the nonhousing community development projects described in the application.

§ 5301(c)(6), from which plaintiffs and the court have plucked "spatial deconcentration", deserves to be set out in its entirety. It describes as one of the seven specific objectives of *community development activities* funded by Title I:

(6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentra-



tion of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income;

Note the differences between the Act and its interpretation by the court below. The objective is not that of Congress; the objective is that of the community development activities. Those "community development activities", as more fully described in § 5304, are activities determined by the present and anticipatable needs of the residents and future residents of *each separate community*. Thus, Glastonbury and West Hartford in devising community development activities are to be guided by the needs of their own present and expected residents with a view to achieving the seven specific objectives of § 5301(c).

A review of the "specific objectives" set forth in § 5301(c) discloses a common thread running through them all, a thread totally consistent with the emphasis in § 5304 on local self-determination. That thread consists of an emphasis on the local unit of government as the relevant area of concern in testing the acceptability of community development activities. § 5301(c)(1) speaks of deterioration of "neighborhood and community facilities of importance to the welfare of the community . . ." § 5301(c)(4) speaks of "community services." And it is abundantly clear upon reading the Title as a whole that the "community" referred to is the individual local unit of government.

§ 5301(c)(6) is also totally consistent with this theme. It speaks of "the reduction of the isolation of income groups *within* communities and geographical areas", not *between* them. It speaks of "the promotion of an increase in the diversity and vitality of *neighborhoods*", (not towns) "through the spatial deconcentration of *housing opportunities*" (*not people*) "for persons of lower income and the revitalization of deteriorating or deteriorated *neighborhoods* to attract persons of higher income."

To be sure, the Act and logic itself anticipates that there will be movement by people of all income levels between



city and town, both ways. Part of that movement, affecting the number of lower income people "expected to reside" in a community, would result from people working in a town living there also. That, in turn, would depend upon individual preference of the lower income persons and the nature of the employment. A town might well attract primarily research laboratory facilities, with primary employment of Ph. D.'s; and even in a market glutted with Ph. D.'s they would not qualify as "lower income" persons. A town might experience a surge of development, but might also have an unusually large number of unemployed inhabitants who, in the ordinary course of events, might be expected to seek out hometown jobs and be hired; and this would reduce the "expected to reside but not yet residing" figure. The new employment facility may well be a freight line whose employees—"low income" only for the sake of argument—are driving trucks nationwide all week, with only rare need to return to the headquarters; would these "lower income" employees be "expected to reside" in the town just because their infrequently-visited garage is located there?

The goal the Act establishes, therefore, is *not* the willy-nilly resettlement of Hartford low income people outside of Hartford just to get them out of the city. It is not federally-directed benign dispersal of the poor. Rather, the Act is directed at community development *by* and *within* each town, based upon the needs of that town's residents. The "spatial deconcentration" of which § 5301(c) (6) speaks is "spatial deconcentration of housing opportunities" *within* communities, not *among* them (though this latter may eventuate *if* local jobs attract lower income workers now living elsewhere). Spatial deconcentration aims at diversification of neighborhoods *within* communities, to prevent in each community the formation of ghettos or blighted areas, and to eliminate them where they presently exist. The only way spatial deconcentration *between* cities could possibly be promoted by devising an "expected to reside" figure would be if that figure were converted into a promise by the town to build low



income housing *regardless* of local job opportunities to employ low income people. *But that clearly it is not under the Act.*

Under the Act the "expected to reside" figure is clearly a function of job opportunities requiring low income employees, both existing and planned. Those "expected to reside" in a town are "expected to reside" there because they have *jobs* there, not because it is outside the central city. There is no evidence that Congress intended to disperse for dispersal's sake. And under the Act, community development activities within a given town must therefore be designed to ensure that those "residing in and expected to reside in the community" do not live in a town that is ghettoized but live in a town that enjoys spatial deconcentration, to the end that those who live there will live in diverse and vital neighborhoods. *That* is the purpose of spatial deconcentration. It describes the *condition* under which lower income people ought henceforth to live wherever they may be; it is not an activist policy of mass resettlement for geographical redistribution of population.

#### **B. The Limited Functions of the "Expected to Reside" Figure**

What, then, is the relevance of the "expected to reside" figure around which this case revolves? It is a figure clearly to be derived from an estimate of existing and planned employment opportunities in the town, the nature of those employment opportunities, how many lower income people not now living in town might fill those jobs, and how many of those new lower income employees might be expected to choose living in the town where they work. But its function is limited. It does *not*, for instance, determine the minimum number of low income housing units the town becomes obligated in the future to build. Planned employment facilities may not be built for a variety of reasons, thus eliminating the employment opportunities on which the "expected to reside" estimates were based. To require the town nevertheless



to build low income housing for people no longer "expected to reside" there because of employment would mean either that the housing would go untenanted or that those moving in would be those not employed in town, but perhaps employed elsewhere; and the premise of the "expected to reside" concept would thus be frustrated by merely substituting one long-distance journey to work for another.

Under the Act, the "expected to reside" figure in the HAP becomes relevant for Title I purposes only as a point of reference by which to judge planned community development activities. Under 42 U.S.C. § 5304(c)(2), HUD *must* approve an application *unless* on the basis of that application—including the needs and objectives set forth in the HAP—"the Secretary determines that the activities to be undertaken are plainly inappropriate to meeting [those] needs and objectives . . . ." Under § 5304(a)(4)(A) the community as part of its HAP must assess "the housing assistance needs of lower-income persons . . . residing in or expected to reside in the community." This need, along with others, serves as the criterion against which the appropriateness of planned activities is to be tested by HUD. Do they advance the objectives of the statute in light of those needs and objectives articulated by the applicant? This is the function, and the only function, vouchsafed to this "expected to reside" figure by Title I. Far from being the "keystone" to the "spatial deconcentration objective" of the Act, it is but one of several components (and an educated guess at that) of the anticipated needs of the town against which its proposed activities are tested.

### **C. The Secretary Did Not Waive Any Provision of the Act**

"A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege". *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). To sustain a finding that the Secretary waived her statutory right to be supplied with an "expected to reside" figure, plaintiffs thus had the burden of proving she intended to and did re-



linquish or abandon her right to insist upon the towns' supplying of that figure. The evidence fails to support that conclusion.

It is undisputed that the central document and occasion in this alleged act of waiver was the promulgation and dissemination by HUD of the Meeker memorandum of May 21, 1975 (Appendix, p. A139). That memorandum, and the context in which it was felt necessary to issue it, are fully set forth in the Statement of the Facts, *supra*, and need not be repeated here. Suffice it to be said by way of summary that the memorandum was issued against a background of nationwide difficulty in developing data concerning "expected to reside" computations. In an attempt to aid these applicants in an understandably difficult process—given the novelty of the "expected to reside" concept, the recentness of the Act, and the absence of HUD guidelines on its calculation—the Meeker memorandum directed local HUD officials to devise an "expected to reside" figure for each town based on 1970 census "journey to work" tables. But since this census data was not broken down on a municipality-by-municipality basis, it proved totally useless for the Connecticut situation where the applicants filing HAPs were municipalities. Faced with an absence of data on which *in the Spring of 1975* to compute an "expected to reside" figure, HUD's Area Office pursuant to the Meeker memorandum asked each town either to devise its own figure, buttressed by citation to data and methodology by which the town arrived at it; or, in the alternative, to indicate what steps the town intended to take to identify a more appropriate "expected to reside" figure in its second-year application (the Act contemplated three one-year applications for funds § 5304(a)(1)). And six of the seven towns (East Hartford having already filed its application) *and* the City of Hartford, faced with the same dearth of "significant facts and data generally available" as stymied HUD, necessarily chose the latter option and, for its first-year figure, necessarily put "0". And the Secretary approved the applications, including Hartford's.



Did the Secretary thereby intend to, and did she in fact, "relinquish or abandon" her right to receive an expected to reside figure? Given what HUD found to be an absence of "significant facts and data, generally available" on which to base such a figure, the answer must be that the figure "0" was, under the circumstances, the only "honest" figure Hartford and its six neighbor towns could have given; and that the Secretary simply *deferred*, out of the practical exigencies of the situation, receiving a more meaningful figure from Hartford and the six towns for one year; but in return for this deferral exacted from them the requirement that they indicate to her how they planned to devise a more appropriate needs figure in their second-year applications. In the absence of "significant facts and data, generally available" on which to base an intelligent "expected to reside" figure, her only alternatives to this solution would have been either to frustrate the intent of the Act by postponing processing of applications and the granting of funds for one year (thus risking the lapse of the 1974-75 appropriations) or insisting upon the submission of what might well be purely conjectural figures without any factual support in a situation wherein she herself had already confessed an inability to find data by which to test the accuracy of those application figures. (Indeed, significantly, plaintiffs' own chief witness, Paul Davidoff, conceded at the hearing that these figures might be worthless, but would have given "respect to the attitude of the Act" T307-308).

In arriving at her decision to defer for a year, the Secretary must doubtless be presumed to have been mindful of a host of factors. These surely included the realization that a one-year deferral in supplying the figure could not possibly have any adverse effect upon the integrity of Title I. In the second-year applications, she would have meaningful "expected to reside" figures. Those figures would enable her not only to assess the projects proposed for the second year, but also to make a more intelligent year-end assessment of the town's previous-year activities under 42 U.S.C. § 5304(d) and, if necessary, to "make



appropriate adjustments in the amount of the annual grants" accordingly. Indeed, she must be presumed to have been mindful of the infinitely greater leverage such § 5304(d) authority gave her over towns in their second-year applications, in the midst of already-begun community development projects, and to have been aware that in her § 5304(c)(2) review of the appropriateness of the projects, she might well rectify any previously inappropriate uses by the simple expedient of "appropriate adjustments" in the absence of corrective action by the towns. Likewise, of course, the Secretary must be presumed to have been aware that the "0" figure for one year would have *no* effect on the number of low income housing units constructed, (HUD's Area Director testified that § 8 funds under the HAPs had been fully subscribed and no more housing money was available T501-503) or on the existence or increase of local employment opportunities for low-income people which would determine the "expected to reside" figure.

Against all of this, to what provision, policy or intent of the Act would it have done violence to defer for one year this elusive and novel computation? The sole function of the figure, the Secretary must be presumed to have known, would be as but one of several components constituting local needs, against which to measure under § 5304(c)(2) whether the contemplated community development activities for that one year were "plainly inappropriate to meeting the needs and objectives" of the town. They were one component of a standard of measurement. As the court observed, the failure to supply this figure did "not detract, for example, from each town's calculation of the housing needs of its present inhabitants who fall within the lower-income classification". Memorandum of Decision, pp. A69-70. Indeed, it did not prevent the towns from specifying in their HAPs "a realistic annual goal for the number of dwelling units or persons to be assisted" § 5304(a)(4)(B) or from indicating "the general locations of proposed housing for lower-income persons" § 5304(a)(4)(C); nor do plaintiffs complain that it did.



Charged as the Secretary was, and is, with the enforcement of this major piece of legislation, mindful of its salutary goals and of its provisions for subsequent review and adjustment of grants, recognizing that a one-year postponement of requiring calculation of a novel figure her own department lacked appropriate data to calculate would work no harm to any person or purpose of the Act, the decision of the Secretary to defer for one year submission of an "expected to reside" figure must inevitably be viewed as an action completely within her legitimate administrative discretion in administering the Act in the manner best conducive to the promptest achievement of its ultimate objectives. This one-year deferral cannot be held to be clearly inconsistent with either the statute, *Morton v. Ruiz*, 415 U.S. 199, 232, (1974), or Congressional intent, *Espinoza v. Farah Manufacturing Company*, 414 U.S. 86, 94 (1973). It falls clearly within the ambit of administrative discretion permitted by a legitimate construction of the Act by the Secretary, and as such due deference to that construction must be accorded. *Udall v. Tallman*, 380 U.S. 1, 16 (1965). It was most assuredly not an action which was "arbitrary, capricious, an abuse of discretion, or [the actual finding of the court] otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

**D. If the Court Had Power to Review, Plaintiffs  
Failed to Show That "0" Was Wrong**

There is, of course, another ground on which the Secretary may be held not to have waived the Act's provision on "expected to reside", and that is to note that each of the towns (including Hartford)—for whatever reason and at whoever's behest or suggestion—did supply a figure of "0" which it was the plaintiffs' burden to prove was "plainly inconsistent" with "significant facts and data, generally available and pertaining to community and housing needs and objectives," § 5304(c)(1), and which plaintiffs failed to meet. For fail to meet it they certainly did, as the silent record attests.

The words of the statute describing the exclusive test by which the "expected to reside" figure is to be tested



are of crucial importance here, for they vigorously militate against the sort of cavalier spray-gun approach plaintiffs have chosen to adopt in their purported refutation. In order that the Secretary—and therefore, a reviewing court (if it had jurisdiction to do so; see *infra*)—might disapprove an “expected to reside” figure, she and it must find that figure “*plainly* inconsistent” (not arguably, or possibly, inconsistent; indeed, the Committee Report set out on the Addendum italicizes that phrase for emphasis) with “*significant* facts and data” (not simply any data critics might uncover or devise or estimate or extrapolate) “*generally available*” (not private data inaccessible to the town or the Secretary, and presumably not data difficult to obtain), “pertaining to *community* and housing needs and objectives” (not national, or statewide, or regional needs and objectives, but those of the applicant community itself, so that the welfare statistics of Hartford would not fall within this definition so far as Glastonbury or West Hartford were concerned).

The court below found that the six towns (and presumably Hartford, too) submitted “no figure at all”, and in so doing “they acted contrary to the clear implication of the statute, that the HAP could not be waived by the Secretary.” Memorandum of Decision, p. A73. The finding is both inaccurate and a *non sequitur*, and has the added defect of avoiding application of the exclusive test for the figure, a test plaintiffs fail. First as to the *non sequitur*, what the towns may have done cannot be said to be contrary to the alleged lack of power of the Secretary; the most it can be said to do is provide an opportunity for the Secretary to act one way or the other under the statute. Thus, no violation of the Act by the towns can logically be found by the Court.

As to the inaccuracy of the finding, it is not accurate to say the towns and Hartford submitted “no figure at all”; that would have been true only if they had failed to complete Table IIC, and left blank the “expected to reside” box. But Hartford and the six towns did not do this; they submitted the figure “0”. Having thus identified their respective needs, their applications had to be approved



unless—and only unless—“0” was shown to have been, in June of 1975, “plainly inconsistent” with “significant facts and data, generally available and pertaining to community and housing needs and objectives”. HUD could find no such data; plaintiffs and the court claim it existed, at least at the time of trial, but could not or did not show it.

The court, in its treatment of East Hartford’s application, adverted to various potential or theoretical *kinds* of data sources which it gleaned from various sources:

For example, HUD’s own instructions suggest the use of census materials; code enforcement records; local agency records; 701 plans; or studies done by reputable research, community service, or planning organizations, such as private consulting firms. The proposed HUD Regulations also list several data sources, such as approved development plans; building permits; and major contract awards. One of the plaintiffs’ expert witnesses, Mr. Paul Davidoff, also listed a number of other possibilities including studies conducted by or for state agencies; plant or shopping center surveys; zip code information from the payroll records of local companies; or data gathered by the local chamber of commerce. And Mr. Jonathan Colman, Director of Planning for the City of Hartford, testified that figures detailing commercial development, in the form of floor space completed or under construction, are compiled by the Connecticut Department of Commerce.

Memorandum of Decision  
pp. A81-82

The court fails, however, to state or find that there existed *in fact* in June of 1975 any of these theoretical or potential sources; or that they constituted “significant facts and data” or that they were “generally available” or that they pertained “to community and housing needs and objectives.” It further failed to find what these June, 1975 facts and data were and that they were “plainly inconsistent” with the needs disclosed by Hartford and the six towns.



Further testing this list, it is notable that the court relies so heavily upon the proposed HUD regulations of January 15, 1976. As to these the court, in recognition presumably of the fact that they were merely *proposed* regulations *and* that they had been published some 8 months *after* the time frame under consideration in this case, had previously specifically stated that it did *not* consider them in its decision (n. 11). Yet thereafter it continually cited them to buttress its reasoning (ns. 33, 40 and 72). But the Secretary's action must be tested by what she had available in *June 1975*, *not* what she had, or might have had, or thought she could have made available in September, 1975, or January, 1976. Indeed, the very refinements in methodology and data sources to which the court adverts in the January 15, 1976, proposed regulations bear eloquent testimony to the methodological benefits the Secretary in *June* may have felt deferral of the "expected to reside" figure might produce. This becomes especially apparent when contrasted with the relatively stark HUD regulations they replaced, but which *were* in effect in June of 1975. 24 C.F.R. § 570.1 *et seq.*, 40 Fed. Reg. 24692 (June 9, 1975).

As for the much-touted "Journey to Work" tables, it has already been seen that federal census journey to work volumes for Connecticut were useless, because they were not broken down by municipality. As for the belated Connecticut State Department of Transportation journey to work tables supplied by plaintiffs in October of 1975 in a post-hearing filing with the judge, these are of no aid since they give no indication of income, so are worthless in determining *low income* "expected to reside" persons; and, like all the other potential sources of data, there is no evidence that these figures were "generally available"—or available at all—in June of 1975, when the Secretary was making her decision.

With respect to the statutory requirement that the facts and data be "generally available", the Court states that the HUD regulations and instruction sheet (plaintiffs' Exhibit 2) "do not require that the data used to review grant



applications be published." Memorandum of Decision, p. A82. For this conclusion of fact—which falls short of a statutory interpretation by the *court* that the *Act* does not require publication—the court relies upon 24 C.F.R. § 570.306(b), subsection (2) of which states:

On the basis of significant facts and data, generally available (whether published data accessible to both the applicant and the Secretary, such as census data, or other data available to both the applicant and the Secretary, such as recent local, areawide or State comprehensive planning data) and pertaining to the community and housing needs and objectives . . .

Presumably, the absence of the word "published" from the phrase "or other data" formed the basis of the court's finding of what HUD regulations did or did not contemplate. The *implication* of the court's statement, however, appears to be that these regulations do not require the data to be in printed or written form; data stored on computer tapes in some vault—public or private—from which data can be retrieved presumably would pass muster with the court. Recourse to the canon of construction of *ejusdem generis* compels the conclusion, however, that since all the data listed by the regulations is clearly in printed or written form—though not necessarily "published" in the sense of publicly disseminated—the regulations clearly contemplated at least that the data be already printed or written, and thus "accessible" or "available", and not merely "composable" or "retrievable".

Likewise, again having recourse to the canon of *ejusdem generis* and referring to the court's list of potential sources, *supra*, it is significant that those drawn from HUD sources are clearly "public" documents, done by or for public agencies or on file with them; whereas those drawn from plaintiffs' witnesses include such matters as "payroll records of local businesses" which, it might well be expected, these private businesses would have no reason to disclose to the town or to HUD.



Finally, as the hearing and administrative records disclosed, Hartford did participate in the A-95 review procedures with respect to various of these town applications. It presented some data—not evaluated by the court as to its accuracy, relevance, significance, or general availability—which were reviewed by HUD and found to be “made up exclusively of vague and unsupported assertions as to the number of persons expected to reside in each of the seven communities in question.” Flood affidavit, p. A126, and therefore not “significant facts and data, generally available”, a finding not questioned by the court. Curiously, however, despite the fecundity of plaintiffs’ witnesses’ imaginations in devising potential sources of data (Memorandum of Decision, pp. A81-82), none of this learning was shared with the A-95 review agency, with HUD, or with the seven towns prior to the hearing, and especially in the spring of 1975.

Indeed, from this extended discussion it must be obvious that the existence of this exclusive test under the Act raises yet another question: to the extent that the case at bar is an attempt on the part of plaintiffs to review agency action under the Administrative Procedure Act—and there is considerable ambiguity both in the record and in the court’s opinion on this matter, see *infra*—is the nature of the review vouchsafed to the Secretary under the Act “agency action . . . committed to agency discretion by law” and hence, under 5 U.S.C. § 701(a)(2) not subject to judicial review? The principles recently reiterated by this Court in *Greater New York Hospital Association v. Mathews*, Nos. 75-6128 and 76-6007, (CA-2; May 14, 1976), Slip Op. 3721, and the cases therein cited strongly suggest that the test of “plainly inconsistent” with “significant facts and data generally available and pertaining to community and housing needs and objectives” is just such a “standard so general that a court could not practicably make any evaluation of the propriety of the determination.” Slip Op. 3727, citing *East Oakland-Fruitvale Planning Council v. Rumsfeld*, 471 F.2d 524 (CA-9; 1972).

Clearly, then, plaintiffs have given the court no basis on which to find, and the court accordingly has been un-



able to find—if indeed it was open to the court to make a finding at all—that the figure of “0” submitted by Hartford and the six towns in their HAPs as their “expected to reside” figures was in June of 1975 “plainly inconsistent” with “significant facts and data, generally available and pertaining to community and housing needs and objectives.” And since this is the exclusive test the Secretary and (if it can review) the court must apply, the Secretary must be held to have properly approved these applications. Indeed, the Act left her no choice but to do so. . § 5304(c).

**E. The Deferred “Expected to Reside” Figure  
Was Only Part of the HAP**

The court, reading § 5304(b)(3) as barring waiver of the HAP by the Secretary, and recognizing that the “expected to reside” figure is only one part of the HAP, nonetheless finds that the statute bars “waiver” of any part of the HAP. It reasons as follows:

However, the Meeker Memorandum permits suburban towns to obtain funding under the Act without the *quid pro quo* Congress decided to require—their taking steps to expand housing opportunities for low and moderate income persons.

Memorandum of Decision, p. A72.

This reasoning is a *non sequitur*. For even assuming *arguendo* that the Meeker memorandum constituted a “waiver”—an intentional relinquishment or abandonment—of the “expected to reside” component of the HAP, its waiver would not have freed the towns from whatever in their application constituted “taking steps to expand housing opportunities.” For the funds applied for could *not* be used to construct housing. 24 C.F.R. 570.201(e), 40 Fed. Reg. 24699 (June 9, 1975). And the “housing opportunities” portion of the HAP—the annual housing goals and the general location of these units required to be identified in the HAP by § 5304(a)(4)(B) and (C)—were *not* “waived”, and *were provided* by the towns.



Indeed, if the court's conclusion that the "expected to reside" component of the HAP could not be waived is based on the "housing opportunities" step-taking it states, then its argument fails, because of the three components of the HAP, the two left unaffected by the alleged "waiver" were the two that address the trial court's concern.

Finally, the court has chosen, with no basis in legislative history, only one of several equally plausible constructions of § 5304(b)(3). One of these obviously is that the section is intended not to describe the *only* portions of § 5304(a) that may be waived, but merely to prescribe the *conditions precedent* to waiving the first three paragraphs of (a); and applying the canon of *expressio unius, exclusio alterius* on this reading, one could as logically find the Secretary free to waive § 5304(a)(4) without the existence of any conditions precedent, in the exercise of her sound administrative discretion. Yet another equally plausible construction would be that in permitting waiver of "all or a part of" the first three paragraphs of § 5304(a), § 5304(b)(3) meant that the Secretary could not waive "all" of paragraph (4), but only "a part of" it. This latter alternative especially has the least effect upon the Act while simultaneously recognizing that salutary latitude within limits that must be reposed in the sound discretion of administrative agencies in the day-to-day implementation of federal legislation. Especially in light of the facts of this case, the wisdom of such discretion-granting must be obvious, and must clearly have been intended by Congress lest the legitimate ends of the Act be frustrated by strait-jacketing its administrators.

Thus, to conclude this section, the deferral for one-year of the "expected to reside" component of § 5304(a)(4)(A) must be seen for what it was—a one-year postponement born of necessity, not an intended relinquishment or abandonment of the obligation to compute that figure in the three-year development plan. And the figure the towns and Hartford did submit has not been shown to violate the



sole test established by the Act for its review. Finally, even if a waiver was properly found here, it was a waiver at most of only a part of a component of the HAP—one part of § 5304(a)(4)(A)—and as such was quite within the power of the Secretary to permit.

### III. Injunctive Relief Against the Seven Towns Was Inappropriate in the Premises.

The seven towns were not named as parties defendant by plaintiffs in the case at bar. They became parties defendant only because HUD moved that they be added. Plaintiffs opposed this motion on August 26, 1975. Their quarrel they insisted, was with HUD, not the seven towns. And indeed it was. The complaint filed in this action was directed solely against HUD and its agents. It claimed *HUD* had various statutory duties it owed to plaintiffs. It claimed *HUD* was required to perform certain statutory functions and responsibilities. It claimed *HUD* had failed to meet those statutory duties, had misperformed or failed to perform its statutory functions and responsibilities. On account of this, it asked that *HUD* be enjoined from various acts.

And after the seven towns were brought into the case, the complaint went unaltered. No statutory duties were alleged to be owing to plaintiffs from the towns. No statutory functions or responsibilities were alleged to be reposed in the towns to perform. No claim was made that the towns had failed to meet any statutory duties owing to plaintiffs, or had misperformed or failed to perform any statutory functions or responsibilities. No injunctive relief, or any other kind of relief, was sought against the towns.

And yet, upon the court's finding that *HUD* had in one respect misperformed a statutory responsibility, an injunction was issued not against HUD or its agents, but against the seven towns, as to which not a syllable of blame had been uttered by the plaintiffs, not an iota of statutory violation had been found by the court. Is it any wonder that



HUD and its agents failed to appeal from this judgment? The umpire found the pitcher to have thrown a spitball, and threw the catcher out of the game.

The questions thus posed by this curious anomaly are several. They are compounded by the procedural convolutions of a case in which the trial court merged, without oral or written order and evidently (T. 552-556) without some of the principals being fully aware of it, the hearing on a temporary injunction with a hearing on the merits; then, while implying its scope was limited to the HUD administrative record under the APA, proceeded to hear three days of supplemental testimony; then permitted introduction as evidence of affidavits originally submitted in opposition to dismissal motions; then accepted an unsworn-to attachment to an affidavit and relied upon it in its opinion; then received directly from counsel for plaintiffs and HUD after the hearing supplemental affidavits with attachments and argumentative letters, some of which never even found their way to the docket sheet but were cited and relied upon in the final opinion nonetheless; and then proceeded to render judgment before any of the parties had even filed answers to the complaint (thus presumably assuming a general denial by all of them of all allegations in the complaint).

One of the questions this case raises is whether it proceeded under the Administrative Procedure Act. The court below, in discussing standing, adverted to that possibility (n. 12) but refrained from holding that plaintiffs had, or did not have, standing as "persons aggrieved" under 5 U.S.C. § 702 (and defendants accordingly have not treated this issue herein, though their failure to do so in no way should be construed as a concession of standing on that theory, because no such concession is intended). Yet in discussing the ambit of its review powers the court looked to the APA, 5 U.S.C. § 706 (n. 61).

If the case at bar does come under the APA, then the caveat expressed by Judge Gurfein in *Evans v. Lynn*, No. 74-1793 (CA-2; 1975), *rehearing en banc granted* August



11, 1975 is appropriate:

In my view, a person may be an "aggrieved person" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 702, to remedy administrative inaction without necessarily having standing for other relief. He may be aggrieved by HUD's failure to perform its statutory duty of inquiry, which is for his class benefit. He may not have been injured in fact sufficiently to coerce the executive agency to withhold funds.

Slip Op. 3919-3920

There has been no demonstration that plaintiffs have been "injured in fact sufficiently" to cause an injunction to issue against any of the seven towns, who are blameless. For clearly, if there was here *any* "injury in fact", it was by HUD, and not by the towns.

Likewise, a serious question arises whether under 5 U.S.C. § 706, an injunction against a party other than the agency itself is permissible. The statute, cited by the court below as its basis, limits the court to the power to "hold unlawful and set aside agency action, findings, and conclusions . . ." Here, the court has not set aside HUD action, a step which would have led to the result of barring disbursement by the Treasury of Title I funds. The court left the declared malefactor, HUD, alone. Instead, it turned to the *towns*, and enjoined *them* from *drawing* upon or *spending* any Title I funds. The powers granted the court under 5 U.S.C. § 706 do not stretch so far.

Especially must an injunction against the *towns* be questionable where, as here, there has been no finding by the Court that the plaintiffs would be irreparably injured by the drawing and spending of the funds *and* that plaintiffs have no adequate remedy at law. For no such finding has been, or can be, made by the court; yet these traditional prerequisites to equitable relief have nowhere been discarded by the Act, the APA, or any other statute or ruling, and in their absence, as here, an injunction cannot be



granted. *Spielman Motor Sales, Inc. v. Dodge*, 295 U.S. 89 (1935); *Indiana Manufacturing Company v. Koehne*, 188 U.S. 681 (1903); see also *Triebwasser & Katz v. AT&T*, No. 76-7095 (CA-2; May 17, 1976) Slip Op. 3753.

Finally, and ironically, the court below in granting its injunction discarded or ignored yet another cardinal precondition of equity: that he who seeks equity must do equity, and must enter the court with clean hands. The necessary inference from any finding by the court that the Secretary violated the Act when she approved the six towns' "0" expected to reside figure, must be that she similarly erred in approving Hartford's identical figure. Yet Hartford is a plaintiff, and it is upon its complaint that the towns have been enjoined. The "guilt" of the six towns is identical to that of Hartford. Hartford cannot obtain an injunction against its neighbors for doing no more and no less than it did.

For all of these reasons, therefore, injunctive relief against the seven towns was totally inappropriate in the premises. It was directed against the wrong defendants, the court lacked the power to do so, and it was sought by a plaintiff with hands in an equal state of cleanliness.

### Conclusion

Plaintiffs have sounded a call for social action, a challenge to all towns to open themselves up to low income housing and to draw those of low income away from the central city. Whether this is a salutary social policy is a proper subject for debate by the legislature. Plaintiffs have forsaken that forum, however, and have sought to import that policy into the Housing and Community Development Act of 1974 and to persuade the courts to ignore the legislative history of the Act to accommodate plaintiffs' desired result. The 1974 Act, to be sure, was far-reaching; but, to plaintiffs' understandable sorrow, its reach did not extend as far as their grasp and the most fervent advocacy cannot alter history. The Act did *not* mandate population dispersal. It returned to each town local self-determination of needs and objectives; but re-



quired that those needs and objectives take into consideration the lower-income people living there already and the expectation that some, at least, of the lower-income people who work in town might want to live there, too. Movement of lower-income people to the town was thus inextricably connected with the previous acquisition of employment there. It is this work-connection that plaintiffs in this case have ignored, and seek to persuade the court to ignore, in their fervent attempt to rewrite history and the law.

To this end, and perhaps symptomatic of their confusion of the discrete functions of the legislative and the judicial branches of government, the zeal of their advocacy has led them to ignore certain strictures of jurisprudence which it is incumbent upon all plaintiffs, however righteous their cause, to prove: their standing, their injury, and their right to relief. They have failed to prove any of these.

Thus, plaintiffs have misconstrued the Act on which they base their case; they have petitioned the court without standing to do so; they have failed to demonstrate any statutory violation by others or injury to themselves; and they have failed to prove their entitlement to relief.

The judgment should be reversed and the injunction dissolved.\*

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\* This Court's *en banc* decision of June 4, 1976 in *Evans v. Hills*, slip op. 6759 superseding the panel decision of June 2, 1975 *sub nom. Evans v. Lynn*, only became available as counsel was reviewing the printer's proofs of this brief, too late for inclusion or extended discussion herein. While, as argued *supra*, the facts of *Evans* were distinguishable from those of the case at bar, and the panel's decision in no way compelled a finding of standing in this case, the *en banc* decision even more forcefully points to a finding that plaintiffs in the case at bar lacked standing to bring this suit.



Respectfully submitted,

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*Town of Glastonbury*  
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## A D D E N D U M

### Report of the House Committee on Banking and Currency

#### TITLE I—COMMUNITY DEVELOPMENT BLOCK GRANTS

This title would establish a new and greatly improved system of Federal assistance for community development activities administered by the Department of Housing and Urban Development. The new program would eliminate many important defects in the existing categorical grant system which finances a broad range of physical and social development activities.

Under the new program—

(1) several categorical-grant programs, each with its own limited focus, grant formula, and distinct program requirements, would be consolidated into a single flexible tool for community development;

(2) application and review requirements would be greatly simplified in order to avoid delays and uncertainties in the carrying out of planned activities;

(3) funds would be allocated to communities of all sizes on a uniform and equitable basis which takes into account both objective needs factors and established program levels; and

(4) local elected officials, rather than special-purpose agencies, would have principal responsibility for determining community development needs, establishing priorities, and allocating resources.

The committee believes that enactment of this new program of community development block grants, discussed in the Housing Subcommittee since the Fall of 1970, is long overdue. Existing HUD programs, with the exception of the experimental model cities program, are narrow and limited in scope and deal piecemeal with what are systemic urban needs. Grants are awarded, by and large, on a competitive, rather than need, basis. And, most important, local elected officials are often bypassed, their authority weakened by semi-autonomous special-purpose agencies not directly responsible to them. These defects would be substantially eliminated by the new program.

A most important feature of the new program is the requirement that communities applying for community development grants must submit housing assistance plans which—

(1) survey the condition of the community's housing stock and assess the housing needs of lower income families living or expected to live in the community,

(2) specify the number and types of units to be assisted and the mix between new and existing units,

(3) specify the general locations of housing to be built, and

(4) assure the availability of public facilities and services adequate to support the proposed housing.

This requirement, together with provisions in title II of the bill which allocate housing assistance funds to communities based, in part, on the housing needs specified in these plans, will make it possible for communities to plan unified community development and housing programs. For the first time, after nearly three decades, of Federal aid for housing and community development, communities will be able

H.R. Rep. No. 93-1114, 93d Cong.,  
2d Sess. 2-3 (1974)



## Addendum

to coordinate the location of new housing units with existing or planned public facilities and services, such as schools, transportation, police and fire protection, recreational facilities, and job opportunities. The committee bill will put an end to a system of support for community development and housing activities which recognizes their close relationship but fails to provide the mechanisms necessary to permit them to be undertaken on a unified basis.

## APPLICATION AND REVIEW REQUIREMENTS

The committee bill proposes an application and review procedure which has two basic purposes: first, that essential national goals and objectives, as developed over nearly three decades of Federal involvement in housing and community development, be retained and that communities be required to use block grant funds to achieve those objectives; and second, that the lengthy, burdensome, and generally frustrating process by which HUD approves applications for various community development grants be simplified to the greatest extent possible.

*Application requirements.* All communities applying for community development funds would be required to submit an application to HUD which—

- (1) identifies its community development needs and specifies both short- and long-term community development objectives which have been developed in accordance with areawide development planning and national urban growth policies;
- (2) formulates a program of activities to be undertaken to meet those community development needs, together with the estimated costs and general locations of such activities, and which takes into account appropriate environmental factors;
- (3) submits a housing assistance plan (the requirements of which are discussed below);
- (4) provides satisfactory assurances that its community development program will be carried on in conformity with Public Laws 88-352 and 90-284, the Civil Rights Acts of 1964 and 1968, respectively; and
- (5) provides satisfactory assurances that, prior to submission of its application, it has complied with the bill's requirements concerning citizen participation.

Furthermore, metropolitan cities and urban counties would be required to meet certain additional requirements. Each such city and urban county must—

- (1) outline a 3-year schedule of program activities to be carried out and indicate resources other than block grant funds which are expected to be made available toward meeting its community development needs;
- (2) provide for periodic examination of program methods and objectives; and
- (3) describe a program designed to eliminate or prevent slums, blight, and deterioration where such conditions or needs exist, and provide improved community facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate.

It should be noted that, with respect to comprehensive areawide planning, the bill contemplates only that areawide planning be fully



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recognized by each applicant as a guide to governmental action, which the committee believes is consistent with the objectives of the comprehensive planning program carried on under section 701 of the Housing Act of 1954. Applicants would not be rigidly bound by comprehensive plans, nor would areawide agencies be given any power they do not now possess under State law to disapprove proposals that are inconsistent with comprehensive plans. The committee intends however, that areawide plans be given careful consideration wherever applicable and relevant to individual community development needs and objectives.

As stated earlier in this report, the committee regards as most important the provisions of the bill requiring the submission by all applicants of a housing assistance plan. In its plan, each community must—

(1) accurately survey the condition of the housing stock in the community and assess the housing assistance needs of lower income persons residing in or expected to reside in the community;

(2) specify a realistic annual goal for the number of dwelling units or persons to be assisted, including the relative proportion of new, rehabilitated, and existing dwelling units, and the size and types of housing projects and assistance best suited to the needs of lower income persons in the community; and

(3) indicate the general locations of proposed housing for lower income persons, with the objective of (a) furthering the revitalization of the community, (b) promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low-income persons, and (c) assuring the availability of public facilities and services adequate to serve proposed housing projects.

The committee wishes to emphasize that the bill requires communities, in assessing their housing needs, to look beyond the needs of their residents to those who can be expected to reside in the community as well. Clearly, those already employed in the community can be expected to reside there. Normally, estimates of those expected to reside in a particular community would be based on employment data generally available to the community and to HUD. However, in many cases, communities should be able to take into account planned employment facilities as well, and their housing assistance plans should reflect the additional housing needs that will result.

The requirement that housing assistance plans specify the relative proportion of new, rehabilitated, and existing dwelling units to be assisted in the community introduces a much-needed flexibility in the provision of Federal housing assistance. These determinations would govern the use of housing assistance funds allocated to communities under title II of the bill. Communities with an ample supply of housing but with many older run-down units may wish to concentrate a substantial portion of their funds on rehabilitating and repairing the older units. Other communities, with expanding populations and vacant lands, may well allocate most of their funds toward the construction of new units. The committee believes this opportunity for communities to make such judgments is an extremely important innovation in Federal housing policy.

The same is true of the bill's requirement that housing assistance plans indicate the general locations of proposed assisted housing in the community. This long-overdue requirement recognizes that the location of housing is an integral part of a community's overall physical development plan; that only if local elected officials make location decisions will they be able to coordinate the location of new housing with existing or planned public facilities and services; and that a major objective of such location decisions must be the promotion of greater choice of housing opportunities and the avoidance of undue concentrations of lower income persons.

\* \* \* \* \*



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The bill would also establish deadlines for the submission of applications by metropolitan cities and urban counties. During Fiscal Year 1975, such applications must be submitted to HUD on or before April 1, 1975. During Fiscal Years 1976 and 1977, applications must be submitted by November 1 of each fiscal year. The purpose of these application deadlines is to assure an adequate opportunity for HUD to reallocate funds which are unused by metropolitan cities and urban counties to other applicants.

*Review requirements.* The bill establishes a review process which the Committee believes strikes a reasonable balance between the needs of communities for prompt processing of grant requests, on the one hand, and the need to assure that Federal funds will be used to achieve national objectives, on the other.

In the case of metropolitan cities and urban counties, the HUD Secretary would be required to approve applications (within 60 days after receipt unless he informs the applicant of specific reasons for disapproval) unless—

(1) on the basis of significant facts and data, generally available and pertaining to community development and housing needs and objectives, he determines that the applicant's description of its needs is *plainly inconsistent* with those facts and data; or

(2) on the basis of the application, he determines that the activities to be undertaken are *plainly inappropriate* to meeting the needs identified in its application; or

(3) he determines that the application does not comply with the requirements of the Act or of other applicable laws, or proposes activities which are ineligible for assistance under the Act.

HUD would also be permitted to accept certifications from communities that certain of the requirements have been met. These certifiable requirements include assurances that the community's program will be carried out in conformity with civil rights laws; that the citizen participation requirements have been complied with; and that a procedure for periodic review of program methods and objectives has been established.

The Committee believes these review requirements provide communities substantial latitude and flexibility to determine their particular needs and the range of activities they deem necessary to meet those needs, without derogating from HUD's responsibility to assure that nationally-established objectives are being met in a reasonable manner.



## Addendum

June 2, 1975 letter from HUD

June 2, 1975

Mr. Donald C. Peach  
 Town Manager  
 2103 Main Street  
 Glastonbury, Connecticut 06033

Dear Mr. Peach:

Subject: Community Development Block Grant Application  
 Housing Assistance Plan, Table II

Section 570.303(c)(2) of the Regulations indicates that the Housing Assistance Plan shall contain estimated housing needs of those "planning or expected to reside" in your community as a result of planned or existing employment facilities. Specifically, Table II, C, Additional Households Expected To Reside In The Locality, should indicate that you have considered those lower-income persons employed in your community who could be expected to reside there.

Review of your Housing Assistance Plan, Table II, C, Indicates that it is reasonable to assume that a significant portion of this potential need has not been included in the HAP.

Therefore, based upon Sec. 570.306(b)(1) governing requests for additional information, please submit by June 10, 1975, a letter (from official authorized to submit and certify to the original application) indicating either:

1. That you will adopt your own need in Table II, C, of the HAP and cite the data and methodology used in deriving such needs figure. Your needs should reflect the general universe of need and should not be limited to your short-time housing goals, or
2. If you are unable to accomplish the preceding in 1 above, indicate what steps you intend to take to identify a more appropriate needs figure by the time of your second year submission.

If you determine that it is appropriate to revise the EAP now or soon after the beginning of the current activity year, we encourage you to do so. If you have any questions regarding this subject, please call your Community Planning and Development Representative.

Sincerely,

MEMorgan:hnd:6-2-75

DATE	ORIGINATOR	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE
	Daniel H. Kolesar, Director					
Name	Community Planning and Development Division					
Date	cc: Mr. Paul Hadenfeld Executive Director					



*Addendum*

## Standard Metropolitan Statistical Areas

## INTRODUCTION

Standard Metropolitan Statistical Areas

"The general concept of a metropolitan area is one of an integrated economic and social unit with a recognized urban population nucleus of substantial size.

The concept of "Standard Metropolitan Statistical Areas" (SMSA) has been developed to meet the need for the presentation of general-purpose statistics about metropolitan areas by agencies of the Federal Government.

This statistical concept of a metropolitan area is based upon a body of published objective criteria. These criteria, reproduced as Part I of this publication, are used to designate and to define standard metropolitan statistical areas.

Information reported in a census taken by the Bureau of the Census is the usual basis for designating a standard metropolitan statistical area. Population estimates prepared by the Bureau of the Census which have been accepted for use in the distribution of Federal benefits are also used as a basis for designating a standard metropolitan statistical area.

Standard metropolitan statistical areas designated on the basis of population estimates lose such designation if they do not qualify for designation on the basis of information from the next succeeding decennial census. Areas designated as standard metropolitan statistical areas on the basis of a census are considered as SMSAs until they fail to qualify for designation on the basis of information from two succeeding decennial censuses.

All standard metropolitan statistical areas include the county or counties in which the qualifying population resides. Other counties may be added to the SMSA definition provided that information from a census shows that they meet certain criteria of metropolitan character and integration.

The criteria used to designate standard metropolitan statistical areas are subject to continuing review, and changes are made as appropriate. They represent a reasoned judgment as to how metropolitan areas may be defined statistically in a uniform manner, using data items that are (1) widely recognized as indicative of metropolitan character (population, urban character, nonagricultural employment, population density, commuting ties); and (2) available from a body of Federal statistics which has been collected at the same time in all parts of the country and processed and tabulated according to consistent standards. Further changes in the criteria may be expected in the future as additional statistical data become available and as the nature and structure of metropolitan areas themselves become better understood.



*Addendum*

The definitions of 276 standard metropolitan statistical areas are presented in Part II of this publication.

Statistical information for these standard metropolitan statistical areas is designed to serve a wide variety of statistical and analytical purposes. Users, both governmental and non-governmental, are cautioned, however, that standard metropolitan statistical area definitions may not be the appropriate definitions to use for particular program planning or program implementation purposes. Federal agencies, in particular, should be aware of the provisions of OMB Circular No. A-46, which state that:

'Standard Metropolitan Statistical Areas shall not be used in the administration of any program unless the head of the agency has determined that such use is appropriate to achieve the program's objectives.'....."

Standard Metropolitan Statistical  
Areas, Revised Edition 1975, Executive  
Office of the President, Office of  
Management and Budget.



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The following Standard Metropolitan Statistical Areas in Connecticut have been defined by the Office of Management and Budget. In each instance the numerical designation of the SMSA appears first, with the total SMSA population, followed by a listing of the towns located within the SMSA and the population of each town.

1160. BRIDGEPORT, CT. Population 401,752.

Fairfield County (part)

Bridgeport city-----	156,542
Shelton city-----	27,165
Easton city-----	4,885
Fairfield town-----	56,487
Monroe town-----	12,047
Stratford town-----	49,775
Trumbull town-----	31,394

New Haven County (part)

Derby city-----	12,599
Milford city-----	50,858

1170. BRISTOL, CT. Population 69,878.

Hartford County (part)

Bristol city-----	55,487
Burlington town-----	4,070

Litchfield County (part)

Plymouth town-----	10,321
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1930. DANBURY, CT. Population 115,538

Fairfield County (part)

Danbury city-----	50,781
Bethel city-----	10,945
Brookfield town-----	9,688
New Fairfield town-----	6,991
Newtown town-----	16,942
Redding town-----	5,590

Litchfield County (part)

New Milford town-----	14,601
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3280. HARTFORD, CT. Population 720,581.

Hartford County (part)

Hartford city-----	158,017
Avon town-----	8,352
Bloomfield town-----	18,301
Canton town-----	6,868
East Granby town-----	3,532
East Hartford town-----	57,583
East Windsor town-----	8,513
Enfield town-----	46,189
Farmington town-----	14,390
Glastonbury town-----	20,651
Granby town-----	6,150
Manchester town-----	47,994
Marlborough town-----	2,991
Newington town-----	26,037
Rocky Hill town-----	11,103
Simsbury town-----	17,475
South Windsor town-----	15,553
Suffield town-----	8,634
West Hartford town-----	68,031
Wethersfield town-----	26,662
Windsor town-----	22,502
Windsor Locks town-----	15,080

Litchfield County (part)

New Hartford town-----	3,970
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Middlesex County (part)

Cromwell town-----	7,400
East Hampton town-----	7,078
Portland town-----	8,812

New London County (part)

Colchester town-----	6,603
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Tolland County (part)

Andover town-----	2,099
Bolton town-----	3,691
Columbia town-----	3,129
Coventry town-----	8,140
Ellington town-----	7,707
Hebron town-----	3,815
Stafford town-----	8,680
Tolland town-----	7,857
Vernon town-----	27,237
Willington town-----	3,755



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4960. MERIDEN, CT. Population 55,959.

New Haven County (part)

Meriden city----- 55,959

5440. NEW BRITAIN, CT. Population 145,269.

Hartford County (part)

New Britain city----- 83,441  
Berlin town----- 14,149  
Plainville town----- 16,733  
Southington town----- 30,946

5480. NEW HAVEN - WEST HAVEN, CT. Population 411,287.

Middlesex County (part)

Clinton town----- 10,267

New Haven County (part)

New Haven city-----137,707  
West Haven city----- 52,851  
Bethany town----- 3,857  
Branford town----- 20,444  
East Haven town----- 25,120  
Guilford town----- 12,033  
Hamden town----- 49,357  
Madison town----- 9,768  
North Branford town----- 10,778  
North Haven town----- 22,194  
Orange town----- 13,524  
Wallingford town----- 35,714  
Woodbridge town----- 7,673

5520. NEW LONDON - NORWICH, CT. - R.I. Population 241,55

Connecticut Part

Middlesex County (part)

Old Saybrook town----- 8,468

New London County (part)

New London city----- 31,630  
Norwich city----- 41,433  
Bozrah town----- 2,036



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East Lyme town-----	11,399
Griswold town-----	7,763
Groton town-----	38,523
Ledyard town-----	14,558
Lisbon town-----	2,808
Montville town-----	15,662
Old Lyme town-----	4,964
Preston town-----	3,593
Sprague town-----	2,912
Stonington town-----	15,940
Waterford town-----	17,227

Rhode Island Part

Washington County (part)

Hopkinton town-----	5,392
Westerly town-----	17,248

5760. NORWALK, CT. Population 127,516.

Fairfield County (part)

Norwalk city-----	79,113
Weston town-----	7,417
Westport town-----	27,414
Wilton town-----	13,572

8040. STAMFORD, CT. Population 206,419.

Fairfield County (part)

Stamford city-----	108,798
Darian town-----	20,411
Greenwich town-----	59,755
New Canaan town-----	17,455

8880. WATERBURY, CT. Population 216,808.

Litchfield County (part)

Thomaston town-----	6,233
Watertown town-----	18,610
Woodbury town-----	5,869

New Haven County (part)

Waterbury city-----	108,033
Naugatuck borough-----	23,034
Beacon Falls town-----	3,546
Cheshire town-----	19,051



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Middlebury town-----	5,542
Prospect town-----	6,543
Southbury town-----	7,852
Wolcott town-----	12,495

While not a Connecticut SMSA the following Standard Metropolitan Statistical Area has a portion of Connecticut within its definition.

8000. SPRINGFIELD - CHICOPEE - HOLYOKE,  
MA., CT. Population 541,752.

Tolland County - Connecticut (part)

Somers, Ct.-----	6,893
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40 Federal Register No. 178 - Friday, September 12, 1975

Title 24—Housing and Urban Development  
CHAPTER V—OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT

[Docket No. R-75-292]

PART 570—COMMUNITY  
DEVELOPMENT BLOCK GRANTS  
Reallocated Funds

On June 9, 1975, the Department of Housing and Urban Development published in the **FEDERAL REGISTER** (40 FR 24692) the consolidated rules and regulations governing the administration and conduct of the community development block grant program under Title I of the Housing and Community Development Act of 1974.

Section 570.107 of the regulations establishes the general policies and rules

governing reallocation of community development block grant funds which are not applied for, or which are disapproved by the Secretary as part of the application review or program monitoring process. It further states that, "each fiscal year, HUD will publish the policies to be employed in the reallocation of funds for that year."

The purpose of this amendment to 24 CFR Part 570 is to establish specific rules and regulations for the administration of funds available for reallocation out of the appropriation for Fiscal Year 1975.

The majority of all applications, for entitlement and discretionary grants from Fiscal Year 1975 appropriations have been reviewed and either approved or disapproved as of the date of this rulemaking. Of the total amount of \$2.2 billion allocated to entitlement applicants,

all but \$4,560,000 was applied for. Of that amount, \$4,532,000 was for metropolitan areas and \$28,000 was for nonmetropolitan areas. Of the total amount applied for, \$580,000 was disapproved, all in metropolitan areas. Therefore, as of June 30, 1975, \$5,112,000 was available for reallocation in metropolitan areas and \$28,000 was available for reallocation in nonmetropolitan areas. Any additional funds that become available for reallocation from the appropriation for Fiscal Year 1975 are likely to be small amounts.

Section 570.402(f) of the regulations presently provides that the policies and criteria governing general purpose funds for metropolitan and nonmetropolitan areas shall also apply to reallocated funds (except that metropolitan cities, urban counties and units shall also be eligible applicants for reallocated



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funds). The most significant result of this amendment is to delete § 570.402(f) and to provide instead in a new § 570.409 that reallocated funds will be used to fund communities with urgent needs.

Congressional intent concerning the reallocation of funds is contained in the following statement in the Conference Report on the Housing and Community Development Act of 1974:

The conferees wish to make clear that reallocated funds would be available to communities with urgent needs, including those with entitlements as well as others with special needs arising from urban renewal closeout activities (H.R. Rep. No. 93-1270, at 132).

Section 570.401 establishes policies and criteria for making urgent needs grants. The three priorities for urgent needs funds are:

- (1) completion of urban renewal projects and neighborhood development programs;
- (2) units of general local government that participated in the planned variations demonstration under the model cities program which will suffer a significant decrease in the level of ongoing activities funded under the planned variations demonstration; and
- (3) completion of projects assisted under the water and sewer facilities grant program, the neighborhood facilities grant program, and the open-space land program.

Funds have previously been made available from the Fiscal Year 1975 appropriation for those planned variations communities which will suffer a significant decrease in the level of ongoing activities funded under the planned variations demonstration. Therefore, reallocated funds will be made available for urgent needs to complete urban renewal programs and water and sewer, neighborhood facilities, and open-space land projects.

Since Section 106(e) of the Housing and Community Development Act of 1974 specifically places a priority on "assuring maximum use of all available funds in the periods for which such funds were appropriated," publishing a notice of proposed rulemaking is impractical and contrary to the public interest. Therefore, this amendment shall become effective on the date of publication.

In connection with the environmental review of this amendment, a Finding of Inapplicability has been made under HUD Handbook 1390.1, 38 FR 19182. A copy of the Finding is available for inspection in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10245, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

§ 570.402 [Amended]

Accordingly, in 24 CFR 570.402 paragraph (f) is hereby deleted and a new § 570.409 is hereby added and is set forth below in its entirety.

§ 570.409 Reallocated funds.

(a) General. This section governs the reallocation of funds as required by the provisions of § 570.107. In accordance with § 570.107 (a) and (b), any amounts allocated to metropolitan cities, urban counties, or other units of general local

government for basic grants or hold-harmless grants in metropolitan areas or nonmetropolitan areas which are not applied for, or which are disapproved by the Secretary as part of the application review or program monitoring process, will be reallocated as set forth in subsection (f). As required by § 570.107(c), the following shall constitute the policies to be employed in the reallocation of funds appropriated for Fiscal Year 1975.

(b) Timing of reallocation. Any amounts appropriated for Fiscal Year 1975 which become available for reallocation as of August 15, 1975, will be reallocated no later than October 15, 1975.

(c) Eligible applicants. States and units of general local government, as defined in § 570.3(v), are eligible to apply for reallocated funds. For the purpose of this section, the second sentence in § 570.3(v) includes those entities described in § 570.403(b) (1), (2), and (3).

(d) Criteria for selection. Reallocated funds will be used to make grants to eligible applicants with urgent needs, including those with entitlements as well as others with special needs arising from urban renewal closeout activities. The term "urgent needs" as used in this section means those urgent needs described in § 570.401(b) (1) and (3). In selecting among applications, the Secretary will give priority first, where reallocated funds will be sufficient to complete a HUD-approved urban renewal project (including a neighborhood development program) within Fiscal Year 1976, a water and sewer project, a neighborhood facilities project, or an open-space land project, and second, where reallocated funds in conjunction with funds provided under § 570.401 will be sufficient to complete one of the above-mentioned projects.

(e) Application requirements. (1) Applicants seeking grant assistance for the completion of ongoing urban renewal projects shall submit the analysis called for in § 570.401(b) (1). Applicants seeking grant assistance for the completion of a water and sewer, neighborhood facility, or open-space land project shall submit documentation which indicates how the applicant meets the criteria of § 570.401(b) (3). Communities considering applying for reallocated funds are urged to contact the appropriate HUD Area Office for more specific instructions regarding submission requirements.

(2) In selecting among applicants, the Secretary will consider all analyses and applications submitted for urgent needs funds under § 570.401 as of August 15, 1975. Final applications shall be submitted only when requested by the Secretary.

(f) Priorities for reallocation of funds. (1) Metropolitan areas. Any amounts which become available for reallocation from appropriations for Fiscal Year 1975, will be reallocated in accordance with the following priorities: (i) to the same metropolitan area; (ii) if reallocated funds are available after meeting the urgent needs in that metropolitan area, to other metropolitan areas in the same State; and (iii) if reallocated funds are

available after meeting the urgent needs in that State, to other metropolitan areas in other States.

(2) Nonmetropolitan areas. Any amounts which become available for reallocation from appropriations for Fiscal Year 1975, will be reallocated in accordance with the following priorities:

(i) To the nonmetropolitan area in the same State; and (ii) if reallocated funds are available after meeting the urgent needs in that State, to the nonmetropolitan areas in other States.

(3) Additional considerations. In determining to which metropolitan area or areas funds shall be reallocated under paragraphs (1)(ii) and (iii), and to which State or States funds shall be reallocated under paragraph (2)(ii), the Secretary shall give priority consideration to the metropolitan areas or States where the greatest unmet urgent needs exist.

(Title I of the Housing and Community Development Act of 1974 (Public Law 93-383); and sec. 7(d), Department of Housing and Urban Development Act. (42 U.S.C. 3535 (d)).

Effective date. This amendment shall be effective on September 12, 1975.

DAVID O. MEERER, Jr.,  
FAIA, AIP, Assistant Secretary  
for Community Planning and  
Development.

[FR Doc. 75-34285 Filed 9-11-75; 8:45 am]

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
[Docket No. FI-584]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations for Orleans Parish, La.

On May 29, 1975, at 40 FR 23278-23279, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations in Orleans Parish, Louisiana. Since that date, ninety days have elapsed; and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of April 14, 1975, and amend the Flood Insurance Rate Map which was in effect prior to that date.

The final flood elevation determinations are in accordance with section 206 of the Flood Disaster Protection Act of 1973 (P.L. 93-234) and the National Flood Insurance Act of 1968, as amended. (Title XIII of the Housing and Urban Development Act of 1968 P.L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 225203A and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

CITY OF HARTFORD, ET AL.,

Plaintiffs-Appellees,

vs.

The TOWNS OF GLASTONBURY, WEST HARTFORD  
and EAST HARTFORD,

Defendants-Appellants,

and

CARLA A. HILLS, ET AL.,

Defendants.

State of New York,  
County of New York,  
City of New York—ss.:

IRVING LIGHTMAN

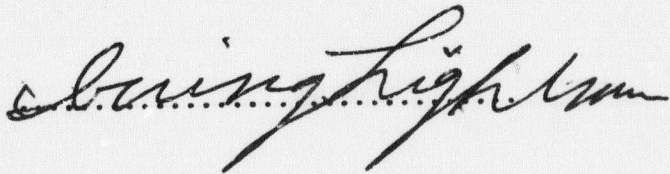
being duly sworn, deposes

and says that he is over the age of 18 years. That on the 17th  
day of June, 1976, he served two copies of the  
Brief of Appellants Towns of Glastonbury and West  
Hartford on  
See attached list

the attorneys for ~~the~~ see attached list

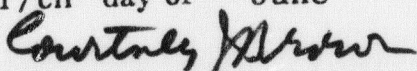
by depositing the same, properly enclosed in a securely sealed  
post-paid wrapper, in a Branch Post Office regularly maintained  
by the Government of the United States at 90 Church Street, Borough  
of Manhattan, City of New York, directed to said attorneys at  
No. See attached list ( ) N. Y.,

that being the address designated by them for that purpose upon  
the preceding papers in this action.



Sworn to before me this

17th day of June, 1976.



COURTNEY J. BROWN  
Notary Public, State of New York  
No. 31-5472920  
Qualified in New York County  
Commission Expires March 30, 1978







Due and timely service of TWO copies  
of the within BRIEF is hereby  
submitted this 17th day of JUNE 1976

Patricia Cooper, For RICHARD A. DELIMAN  
.....  
of Counsel Attorney for PLAINTIFF - APPELLERS